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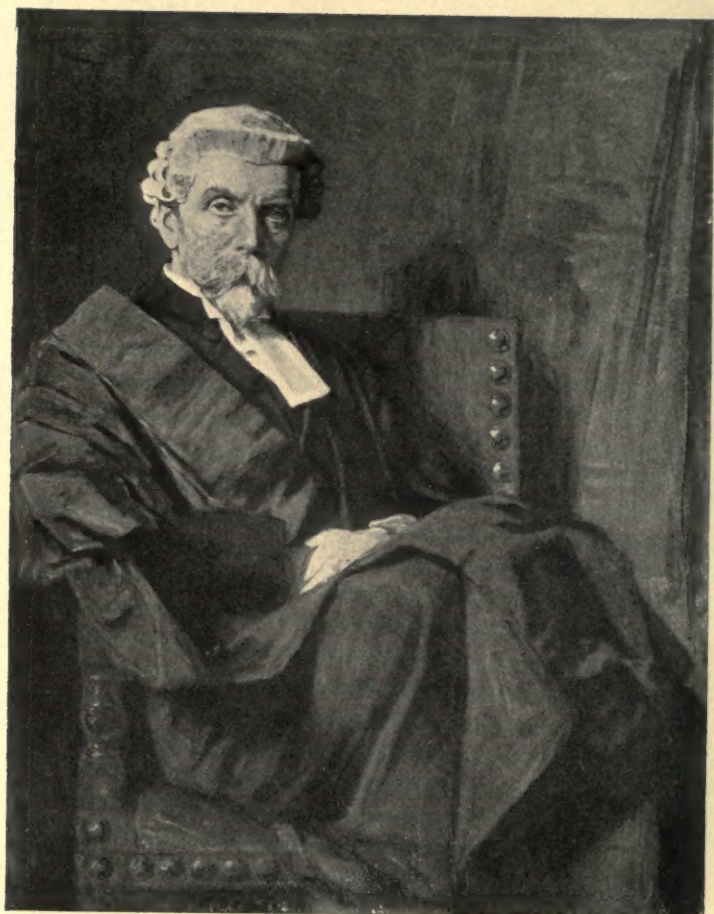
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AT THE BAR

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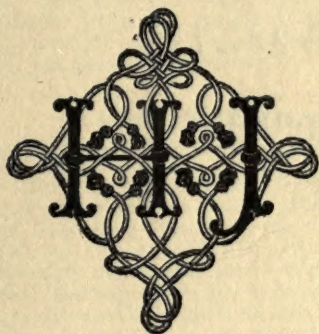
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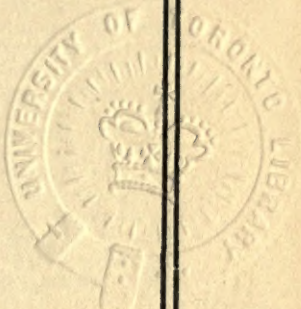
J. H. BALFOUR BROWNE, ESQ., K.C.
From a Portrait by Sir George Reed, P.R.S.A.

FORTY YEARS AT THE BAR

Johnathan
BY
J. H. BALFOUR BROWNE
K.C., L.L.D. D.L., &c.



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CONTENTS

CHAPTER I

EARLY REMINISCENCES

	PAGE
Not an Autobiography—Professor David Masson—Hope of a Literary Career—Dr. John Brown— <i>Rab and his Friends</i> —Dr. Hutchison Stirling— <i>The Secret of Hegel</i> —Professor Balfour, "Woody Fibre"—His Graduation Address—Aggressive Religionists—The Speculative Society—Stevenson on "The Great Men who were Members"—The Pictures—Dispute with the Senatus Academicus—Early-closing Order—Deputation meets Committee—A Compromise—At the Bar—Went Circuit—A Brief at Derby—"Soup" at Sessions, and Dockers—A Reason why Sentence should not be Passed—A Sketch by Lockwood—Mr. Campbell Foster—First Civil Case—Mr. Digby Seymour, Q.C.—Conversation with the Judge, Mr. Justice Brett—A Counsel who applied for Adjournment—Mr. Justice Honeyman—Wrote a Book on Medical Jurisprudence of Insanity	I

CHAPTER II

THE PARLIAMENTARY BAR AND WHAT IT DOES

The Parliamentary Bar and What it Does—Public Ignorance and Want of Interest in its Doings—"New Silks"—Thackeray's Little Dinner at Timmins's—Men who made Fortunes at the Bar—Railway Mania, 1845-46—The Use of Local and Personal Bills—The Compulsory Purchase of Land—Competition between Rival Companies—Tears in Court and Laughs in Committee—Railway Amalgamations—The Hull and Barnsley Railway and the North-Eastern Monopoly—The Manchester Ship Canal Bill—Mr. Adamson—Opposition of Mersey Dock and Harbour Board—Lord Kelvin as a Witness—"Cut-throat" Competition—The Mono-rail or Lightning Speed Railway—Hansard's Report of Debates on First Liverpool and Manchester Railway Bill—Electric Traction on Railways—Advantages of—Some Great Water Bills—Municipal Trading—Glasgow's Proposal to take Loch Voil—Sentiment and Legislation—Gas Works and Competition—Districting London—Alkali Manufacturers and Monopoly—A Witness not cross-examined	13
--	----

CHAPTER III

COMPANIES AND CORPORATIONS

Private Enterprise and State and Municipal Management—Parliamentary Concessions Originally not Limited in Time—Optional Purchase of Railways—Act of 1844—Purchase of Tramways

	PAGE
by Local Authorities—Tramways Worked by Them—Electric Lighting Acts, 1882 and 1888—Gas and Water Companies—A Compulsory Purchase, 1876—Stockton and Middlesbro' Corporations Bill—The Contest as to the Purity of the Water—Dr. Meymott Tidy and Sir Edward Frankland—Purchase of the London Water Companies—Cases where Application Failed: Eastbourne, Folkestone—Mr. Merryweather as an Advocate and Joker—Some Stale Stories—What has been Done by Private Enterprise or Merchant Adventurers—Restrictive Clauses put on Companies—The Sterilisation Clause—Put on the London Dock Company—Effect of—A Limited Dividend—Conversion of Borrowed Money into Shares—Shares now Sold by Auction—Premiums go to Capital—Policy of American Railway Companies as to the Raising of Capital	36

CHAPTER IV

SOME OF MY LEADERS

The Right to Criticise—Giants in Those Old Days—Sir Edmund Beckett, "Lawyer, Mechanician, and Controversialist"—Leader of the Parliamentary Bar—His Many Literary Adventures—Mostly Bitter—His Country House—The Architect—Clocks—Damages for Libel—What he did at St. Albans and Lincoln's Inn—His Great Gifts in Connection with St. Albans, and Great Fortune—His Confidence—Mr. Hawksley's Allusion to His Knowledge of Clocks and Wills—George Stovin Venables, Q.C., a Great Leader—Hope Scott's Charm—Venables Broke Thackeray's Nose—Not a Brilliant Advocate—The <i>Saturday Review</i> and <i>Times</i> Summary—Fitz James Stephen and Venables—A Compliment From—Granville Somerset, Q.C.—Samuel Pope, Q.C., "Jumbo"—Pope and Murphay in an Election Petition Case—The Regent's Canal Railway Bill—Was Secretary to the "Alliance"—The Value of Moderation—Dinner at the Savoy—Pope and Gold Mines—Mr. John Clerk, K.C.—Sir Ralph Littler, Chairman of County Council and Quarter Sessions—Colney Hatch Gas Company—Incident in a Glasgow Bill—E. H. Pember, K.C.—Energy and Industry—As a Cross-Examiner—His <i>Horace</i> and Other Books of Poems—Some Anecdotes about George Parker Bidder, Q.C.—His Father "Visualizing Figures"—The Calculating Phenomenon—A Successful Engineer—Bidder at the Bar—A Story about how he Came by his Death—The "Mystery" made Large Sums but Lived and Died Poor	50
--	----

CHAPTER V

SOME OF MY LEADERS WHO WERE NOT AT THE
PARLIAMENTARY BAR

Henry Mathews (Lord Llandaff) in the Barry Railway Bill—Chairman of Royal Commission in London Water Supply—Counsel Employed—Great Length of Inquiry—As a Verdict-Getter—Compared with Sir John Holker—His Impatience—Story of him at the Bar—As Home Secretary—Sir Richard Webster

CONTENTS

vii

PAGE

(Lord Alverstone)—“Keep it up”—Sir Horace Davey (Lord Davey) in Politics—In Cases with him—Pooh-poohing Juniors—Sir Henry James (Lord James of Hereford)—In the Railway Rates Inquiry—A Weak Backbone—In the Mansion House—Case as to Rates on Foreign Produce	72
--	----

CHAPTER VI

SOME OTHER MEMBERS OF THE PARLIAMENTARY BAR

Some other Members of the Parliamentary Bar—Mr. Herbert Saunders, K.C.—Mr. Pembroke Stephens, K.C.—Mr. Michael, K.C.—Mr. O'Hara—Mr. Frederick Clifford, K.C.—Work on Private Bill Legislation—Reports of Referees—Mr. Shiress Will, K.C.—Went into the House of Commons—“Take a Seat”—No Resurrection at the Bar—Made a County Court Judge—Story Concerning Mr. Warmington, K.C.—A Seat and a Baronetcy—Mr. Ledgard, K.C.—Mr. Erskine Pollock, K.C.—Mr. Claude Baggallay, K.C.—Mr. C. C. Hutchinson, K.C.—Mr. Dankwerts, K.C.—Sir Edward Boyle, K.C.	85
--	----

CHAPTER VII

WATER SUPPLY

My First Brief in Parliament—Water Company took Water from Calder—A Good Ink—Langsett Scheme of Mr. Thomas Hawksley—Opposition continued before Lord Aberdare—Question of Alternative Schemes—Mr. Shaw and Sir Edmund Beckett—Water Brought from Great Distances—Large Impounding Reservoirs—Underground Sources—Wells—Thames Water—Pollutions Above the Intakes—Sand Filtration—Dr. Houston's Experiments—Sedimentation in Reservoirs—London has therefore not gone to Wales for Water—Decanted Thames Water—Hard Waters Made Soft—Soft Waters acting on Lead—Prevention—The Chlorinisation of Water—Cambridge Bill—Meymott Tidy and Silica—No Human Hairs in Thames Water—Mr. Michael's Joke—Rivers Purifying Water—Water for Great Yarmouth from River Bure—Salt in Water—Sir William Ramsay's Invention—Compensation in Water—The Rainfall	91
--	----

CHAPTER VIII

THE RAILWAY COMMISSION

Railway Companies' Monopoly—Power to Vary Bills—Must Charge Equally to All—Railways Intended to be Roads Open to Public—A Right Without a Remedy—Clipping the Wings of Parliament—Foreign Goods not to be Preferred—Circumstances not Similar—Act of 1854 as to Preference and Facilities—Transferred to Railway Commissioners, 1873—The First Commissioners, Mr. Macnamara, Mr. Price, and Sir Frederick Peel—A Man of Great Ability—Act of 1888—Judge of High Court

	PAGE
made Chief Commissioner—Mr. Justice Wills, Mr. Justice R. S. Wright, Mr. Justice Collins (Lord Collins)—Counsel before the Commissioners—Sir Richard Webster as an Opponent—The Question of Reasonable Facilities—Courts and Legislation at Loggerheads—Railway Company and the Carrying of Passengers—The Power of Owners to make Branch Railways—Duty of Railway Companies to Afford Facilities Limited—The <i>then</i> Condition—Traders Can Pull Strings in Parliament—Got Act as to Private Sidings in 1904—Cases Since have made it a Dead Letter—"Through Rates" to be Given to Traders—But not from a Siding—So Legislation of no Use	104

CHAPTER IX

" VIEWS "

Going to See the <i>Locus in quo</i> —View an Iron Works—Danger from Blowing up "Old Horse"—Mr. Shaw Counsel in Case—View for Oldham Corporation—Deanhead Commissioners—The Battle of the Oceans—View at Staveley Iron Works—Dispute with Midland Railway Company—The Birmingham Water Scheme in Wales, and the View—Æsthetic View—Tattersal Castle—View of the Lake District from Dunmail Raise to the South—Lord Lonsdale's Claim—Two Views for Glasgow Corporation—One "Beating the Bounds" of the Extended City—The Other, Lochs Voil and Doine, the Rob Roy Country, and Braes of Balquhiddier—"Gave up to the View what was Meant for Mankind"	114
--	-----

CHAPTER X

FLIES

Sanitation—Bradford, and Site for Smallpox Hospital—Opposition of Residents—The Murderous House-fly—Cruelties of Children—Campaign of Frightfulness—Professor Celli's Discovery—Bubonic Plague and Flies—Fleas and Disease—Lice as Disease Carriers	121
---	-----

CHAPTER XI

ACCOUNTS

Reading in Chambers—Education by Practice and not by Examination—Reading With an Accountant—"Devilling"—The Importance of Distinguishing Capital and Revenue—Cross-Examination of Accountants—An Accountant Who made it so Clear One could See Through It—Maintenance and Improvement—Revenue and Capital Accounts—Directors' Desire to Pay Good Dividends—An American Railway Company that "Ploughed it into the Road"—Genuine Receipts—Railways and Development of Resources of Country—Branch Line Feeders—Pooling Arrangements to Effect Economy—Districting England—Rating Cases and Accounts—To Arrive at Rent of Small Piece

CONTENTS

ix

PAGE

of Line—Difficult Calculations—Hypothetical Tenant—How to Arrive at Rateable Value—Working Expenses—Stations Separately Assessed—Tenants' Capital or Occupiers' Share—The Percentage Allowed on—Accountants' Evidence As To—Statutory Deductions for Renewal of Permanent Way—Two Incidents in Rating Cases—The Sinking Fund of Corporations to Pay off all Cost in Certain Number of Years—To Relieve Posterity—Electric Undertakings—The Wearing Out of Plant—Depreciation and Obsolescence—Necessary to Meet Depreciation out of Revenue	- - - - -	123
---	-----------	-----

CHAPTER XII

SOME OTHER MEN

Other Notable Persons Besides Lawyers—Thomas Aird, Author of the <i>Devil's Dream</i> —Thomas Carlyle and his Nephew "Prince Aitken"—First Time I Saw Carlyle—The Shell of the Tragedy—Dr. John Carlyle—Carlyle's Philosophy According to Aird—Carlyle as a Boy and Young Man—My Novel and Carlyle's Comment—Waiting for a Bus—Into Eternity—Lord Young, a Successful Lawyer—When I was Introduced to Him—The Dinner in Moray Place—A Member of English Bar and Bench—His Conversation with the Poet Laureate—Hubert von Herkomer—Sir George Reid, President of Royal Scotch Academy—Sir Thomas Chambers, Recorder of London—Sir John Lubbock (Lord Avebury)—Mr. Gully (Lord Selby)—Canon Ainger, Master of the Temple—Sir Frank Lockwood—Sir A. Bosanquet	- - - - -	133
--	-----------	-----

CHAPTER XIII

SUGGESTED ALTERATIONS IN PRIVATE BILL PROCEDURE

Parliamentary Bar—Under Sentence of Death—Members of Parliament Overworked in Busy Sessions—Good Work in Committees, but not Reported—Committee of Investigation, 1863—Joint Select Committee, 1869—Mr. Dodson's Resolutions in House—Provisional Order System—Tribunal of Judicial Character—Not Desired—Sir Theodore Martin and Mr. Leeman—Sir William Harcourt and Mr. Chichester Fortescue on—The Court of Referees—Mr. Robert Lowe's Proposal—Sir Edmund Beckett on— <i>Saturday Review</i> on—A Second Inquiry in Case of Private Bills—Sir William Harcourt on—Frequently Second Inquiry has remedied Injustice Done in First House—London, Tilbury and Southend Railway Case—Ashington Urban District Bill	- - - - -	149
--	-----------	-----

CHAPTER XIV

COMMITTEES AND CHAIRMEN

Sir John Kennaway as a Chairman—Two Noble Chairmen in House of Lords Committees—Confidence between Bench and Bar—Lord Esher and Counsel—What is that Red Line?—G.W.R. and M.S. & L. Line—Some Excellent Chairmen Now no More—	- - - - -	
---	-----------	--

	PAGE
W. E. Foster on the Ship Canal—Swing Bridges—Irish Railway Amalgamation Bills—Chairmen in Lords Committees—How Committees are Constituted—A Casting Vote—The Non-Contents Have it—Mind-tight Compartments—Counsel and Witnesses had to Stand in Lords Committees—No Adjournment for Lunch—" Week-Ends "	155

CHAPTER XV

ON " POACHERS "

Casuals—Parliament an Imperial Tribunal Open to Advocates of the Scotch and Barristers of the Irish Bar—Men who Practised at other Bars and Came up Occasionally—Mr. Milward, Q.C.—Mr. J. B. Aspinall, Recorder of Liverpool—Mr. H. M. Bompas, Q.C.—Rhymney Railway—Mr. Philbrick, Q.C.—A Too Humorous Speech—The Tedious Proser—The Promissory Note Argument—Sir Arthur Collins—Hunter Rodwell Came Back—A. E. Miller, Q.C., was Railway Commissioner—Master in Lunacy and Legal Member of Council of India—Went to the Irish Bar—Sir Francis McLean, Chief Justice of Calcutta—Mr. Ambrose, K.C.—Alfred Lyttelton	164
---	-----

CHAPTER XVI

STRONGER THAN PARLIAMENT

What Parliament can do—Has Discouraged Corporations Subscribing to Companies—In Hull and Barnsley Case—In Ship Canal Case—The Undertaking Derelict—Corporation Lent £5,000,000—Liverpool Docks Taken from Corporation and Transferred to Trust—Corporations in Competition—Bristol Docks, and Docks at Mouth of Avon—War of Rates—Ruinous Competition—Purchased Rival Undertakings—Preston and the Ribble Navigation—Nottingham Corporation and Trent Navigation Bill—North-Eastern Railway Company's Desire to Acquire Hull Docks—Refused by Parliament—Chairman's Interest in the Company—The Railway Company Forced Hand of Parliament—So with Regard to Southampton Docks and London and South-Western Railway Company—The Purse Mightier than the Legislature—Public Safety and Level Crossings	173
--	-----

CHAPTER XVII

RETAINERS

A Compliment and a Nuisance—" The Queen's Shilling "—Disputes as to Referred to the Attorney-General—The Dispute About an Early Retainer—My First Parliamentary Five Guineas—A Meeting at the " Bull "—New Company Bought Off—General Retainers from Companies and Corporations—Tube Railway from Hammersmith to the City—Metropolitan Railway Company's Claim—The Attorney-General's Action in a Dispute between Two Companies—Solomon's Bisection of a Baby

CONTENTS

xi

PAGE

Nothing to it—The Bradford Corporation's Demand on a General Retainer—Mr. McGowan then Town Clerk—Acted for Morley Corporation—In a Rating Case—Sir William Robson's Decision—The Case before Quarter Sessions	180
--	-----

CHAPTER XVIII

WITNESSES

Clergymen as Witnesses—Where a Minister Gave Evidence—Emptied the Church—An Afternoon Hearing—The Moral Aspect of an Extension Bill—Cross-examination of a Vicar—All Sorts of Witnesses—One that will not Answer and one that Answers too much—A Secretary's Fitter—Accountants as Witnesses—Doctors as Witnesses—Scientific Witnesses—Geology and Hydro-Geology—Brine Pumping in the Salt District—Surface Damage—Dry Rock-Salt Mines—Brine "Runs"—The Law as to Taking Rock-Salt—Bills to Make Pumpers Liable for Damage by Subsidence—Underground Water—From Strata under the London Clay—Bristol Case—Water Escaping into Sea at Weston-Super-Mare—The Strata and "Faults"—Surveyor's Evidence of Value—Great Differences in Amounts—Witness in a Rating Case, and Mr. Lush—Sir Frederick Bramwell in the Regent's Canal Railway Bill—Mr. Mansergh and his Experience—Evidence About Finance—Brokers and Bankers—Good Counsel get Good Witnesses—An Excellent Lady Witness	187
--	-----

CHAPTER XIX

ARBITRATIONS

Arbitrations Political and Legal—Splitting the Difference—The Surveyors' Institution—"A Gold Mine" and Lord Brampton—The Peace Agreements between the South-Eastern Railway Company and London, Chatham and Dover—Standing Arbitrator—Lord Watson—Counsel in the Pritchard Poison Case—Mr. Penny's Evidence—Arbitration before Lord Robertson—Payment by "Lump Sums"—Lord Robertson when at the Bar—A Dublin Arbitration—Slighting the Irish Bar—The Remuneration of the Arbitrator—Arbitration Between the Great Western Railway Company and the Metropolitan Railway Company before Lord Herschell—His "Findings"—Arbitrations in South Africa—The Lawyers' Delay—Counsel for Rand Water Board—Water Companies of London Arbitrations—New River Company and its King's and Adventurers' Shares—Important Legal Point—In Court of Appeal and in House of Lords—Marylebone Borough Council Arbitration—Derwent Valley Water Board Arbitration—Went to High Court, and Again to Parliament—A Racecourse Case—A Market Without Metes or Bounds—The Injury to Chatsworth by Pipe Through the Park—Temple Newsom Lands taken for the Disposal of Leeds Sewage—The Reinstatement of an Electric Lighting Generating Station—The <i>Morning Post</i> and Strand Improvement—The Elevation of the London and North-Western Railway Company's Main Line—Arbitration as to the Compensation	203
--	-----

CHAPTER XX

NO MEAN CITY

PAGE

Extension of the Boundaries of Cities and Towns—The Idea that it should be Cheap and Easy to Apply to Parliament—Private Bills alter General Law—Strong Public Case Required—Opponents put to Expense—Divorce Bills in the Old Days—Facilities for Divorce—Cost of Private Bills very great—Some have Cost Over £20,000 to the Promoters—Some Cross-Examinations Cost Three Guineas a Minute—The Cheaper Provisional Order System—In Small Cases—In Important Matters Three Inquiries instead of Two—The Inquiry into the Extension of Birmingham—The Bill for the Extension of Glasgow—As to the Consent of the Inhabitants of the Districts to be Annexed—Liverpool and Bootle—Plymouth Extension to include Devonport and Stonehouse—Large Communities—Advantages of—Smaller "Nationalities" and Local Self-Government—Town Councillors' Work on Great Corporations—Will Want to be Paid like Members of Parliament—The Greed that is at the Bottom of such Proposals—Officials' Salaries—Or Relief of the Rates of the Overburdened Ratepayers of the Central Town—Claim of County from which Rateable Area is taken away—Hartlepool and Caterham Cases—Rates not an Income or Property—No Financial Adjustment as to—The Duke of Devonshire's Joint Committee Report—A Compromise—The Extension of Cambridge—Application to be made a County Borough and so taken out of County—County Council Objection—County Crippled—Bill Rejected by House on Third Reading -	217
---	-----

CHAPTER XXI

SOME OF MY JUNIORS

Debt to my Juniors—Their Loyal Help—Illustration of the Use of a Junior—Wightman Wood in a Water Bill—The Reply—Debt to many Men who are still at the Bar—The Fussy Junior—Incidents—The Fault of Vanity—Have been most Fortunate in my Juniors—Mr. Batten as a Junior—Director of many Companies—Sometimes a Thorn in the Side of a Great Railway—Some Letters to me from my Juniors who are still at the Bar -	226
--	-----

CHAPTER XXII

CLIENTS

A Client that had the Best of Me—No Financial Adjustment Claimed by my Clerk—A Counsel who Thought Well of his own and Ill of Others' Clients—The Help some Clients can give Counsel—Two Briefs Compared—Sir John Hollams and his Brief in the New River Water Company's Cases—A Peremptory Client—The Client who Lets you Alone—The Client who tells you the Witness is a Liar—The Country Client and the Parliamentary Agent—Some of the Agents of my Time—Sir Theodore Martin as an
--

CONTENTS

xiii

	PAGE
Agent and a Writer—Useful Hints from Clients—A Witness on both Sides—A Chemist, and the Water Pumped from the Severn Tunnel—An Independent Opposition to the Forth Bridge—A Golf Story of a Client - - - -	232

CHAPTER XXIII

ON GIVING EVIDENCE

Enjoyed being a Witness—Heckled—Evidence as to the Canadian Law as to Inebriates before a Committee—Evidence as to Working of the Railway and Canal Traffic Acts—As Secretary to the Commission—As to Technical Knowledge on the Bench—Went as Expert for a Railway Company to Scotland and was Cross-Examined—The Scotch Private Bill Procedure Act—Scotch Counsel I have been Associated with—Evidence before the Joint Select Committee on the Water Supplies Protection Bill—Altering the General Law as to Property in Underground Water—Lord MacDonnell Chairman—Observations on National Water Sources—Evidence as to Shorthand Writers before Recent Committee—Counsel's Notes and Shorthand Writers' Notes—Quick Speakers, and Many Speaking at Once—A Shorthand Writer's Mistake—Short Answers - - -	239
--	-----

CHAPTER XXIV

CONTRACTORS' CLAIMS

Private Bill Business Deals with Important Matters—Schemes are Intended to Benefit the Public—Briefs in Contractors' Claims—Why Contractors are Selected—Tenders—The Lowest Tender—Inducement to Accept—May Pull Through—Or Make Thumping Claim for Extras—That has to be Arbitrated upon—Cases depend upon Thousands of Letters and Labyrinths of Figures—Not Interesting—One Interesting Case—the Tunnel for Vyrnwy Water under the Mersey—Siphoning—The Tunnel made by Means of Greathead's Shield, and Compressed Air Through Silt—Claim by Contractors—In Court—And then in Arbitration—The Inquiry, and Sir Frederick Bramwell's Joke • -	247
---	-----

CHAPTER XXV

A VERY MISCELLANEOUS CHAPTER

Dinners Given to Retiring Members of the Bar—Dinner to C. A. Russell, K.C.—Dinner to Sir Edward Clarke, K.C.—Dinner at the Albion to Sir Edmund Beckett—Mr. Venables' Speech—Dinner to Sir Francis Jeune (Lord St. Helier)—His Reference to his Going—Mr. Pember's Explanation—Dinner given to Mr. Pember when he Retired—Some Passages-at-arms—The Atmosphere in the Courts—A Lord Justice's "Aberration"—A Surveyor who Complained that I was Injuring his Practice—Amendment—Once a Director of a Company—And once a Defendant in an Action—The Beltim Land Company—The Directorate—	
---	--

	PAGE
Became Trustee for Lenders and held Debentures as Security— Action Against Me—Special Adaptability—What it Means— The Uncertainty of the Law—Countess Ossalinski's Case— Other Illustrations—An Ocean Dock—An Aerodrome—"Property," the way it was Looked at in the Old Days and To-day— Tennyson's Northern Farmer—Full Compensation to Owner— Allowance for Compulsory Sale—Both for "Compulsion" and Unforeseen Prospective Value—Now a Change—Acts of Parliament make Allowance Illegal—The Purchase of a Whole Estate by a Large Town—The Resistance of the Owner's Three Sisters—The Hall and its Old and New Surroundings—Bill was Opposed and Failed—Corporation Offered more than Estate was Worth—Offer Refused—Ultimately was Sold on Arbitration Terms for a much Smaller Sum - - -	252

CHAPTER XXVI

SEWAGE DISPOSAL

Not a Subject for Popular Exposition—Many Important Questions Connected with—Case of Corporation of Northampton—In- spector of Local Government Board Examined as a Witness— Had Reported Against the Order—The Provisional Order Sys- tem—Order Determined on at Whitehall—Case of the Federation of the Pottery Towns—The President's Speech—Nothing More to be Said for Promoters—Protest of Counsel for Burslem—The Large Scavenging of Towns—Manchester Case—My Juniors— M. Cagniard Latour's Discovery—Yeast—Pasteur—Bacteria as Scavengers—Methods in Old Days—Spoiled Streams— Experiments with Earth of Paris Sewage Farm—Aerobic and Anaerobic Bacteria—The Magic of Sewage Disposal - -	264
---	-----

CHAPTER XXVII

SPEECHES

If Good Speaker, not a Good Lawyer—A Suspicion of Glibness— Carlyle on Golden Silence and Silvern Speech—Stevenson's View of Talk—Windy Parliamentary Debates—The Backwater of the Parliamentary Bar—Making of Law not a Trivial Matter —Bills Involving High Monetary Issues more Important than Small Suits—Gift of Exposition—Importance of—Interesting Speeches and Clear Speeches—Committee Work Bracing— Opposition—Tact a Supreme Art in a Counsel—Emerson on— Long Speeches a Mistake—A Story of an Illustrious Judge's Boring After-Dinner Speech - - -	271
---	-----

CHAPTER XXVIII

TRAVEL

Went to Singapore—Tanjong Pagar Dock Company's Case—The Tribunal and Counsel—Heat in Red Sea—Fellow-Passengers— Straits Settlements' Governor sent His Yacht to Meet me at Penang—Government House, Singapore—The Arbitration—	
---	--

CONTENTS

XV

PAGE

The Case an Ordinary One—Voyage was Interesting—At Port Said—Blowing up of a Dynamite Ship in Suez Canal—Eastern Bank Blown out—Singapore from the Sea—The “Key to the East”—Collyer’s Quay—Raffles Plain—Sanitation—Motley Populations—The Chinese and Japs—The Club—The Suburbs—The Trees—A Malay Village—Tin—The Indian Ocean—Colombo—Dinner at the Club—Went by Night to Kandy—The Peradenia Gardens—Temple of the Tooth of Buddha—Back to Colombo and the SS. <i>Britannia</i> —Twenty Minutes in Africa—Left the Boat at Suez and Went to Cairo—Saw all Cairo the next Morning—Breakfasted at Shepherd’s Hotel—Got Back to Port Said and Joined the Steamer in the Afternoon	- 275
--	-------

ILLUSTRATIONS

J. H. BALFOUR BROWNE, Esq., K.C.	<i>Frontispiece</i>
	TO FACE PAGE
LORD GRIMTHORPE (SIR EDMUND BECKETT, K.C.)	14
SAMUEL POPE, Esq., K.C.	38
SIR RALPH LITTLE, K.C.	60
E. H. PEMBER, Esq., K.C.	80
H. W. CRIPPS, Esq., K.C.	98
GEORGE PARKER BIDDER, Esq., K.C.	116
HERBERT SAUNDERS, Esq., K.C.	136
PEMBROKE SCOTT STEPHENS, Esq., K.C.	152
LORD ALVERSTONE, LORD CHIEF JUSTICE OF ENGLAND (SIR R. E. WEBSTER, K.C.)	170
LORD LLANDAFF (MR. HENRY MATHEWS, Q.C.)	190
LORD JAMES OF HEREFORD (SIR HENRY JAMES, K.C.)	214
ERSKINE POLLOCK, Esq., K.C.	230
W. O. DANCEWERTS, Esq., K.C.	250
C. C. HUTCHINSON, Esq., K.C.	266
THOMAS HAWKSLEY, Esq., C.E.	282

FORTY YEARS
AT THE BAR

FORTY YEARS AT THE BAR

CHAPTER I

EARLY REMINISCENCES

Not an Autobiography—Professor David Masson—Hope of a Literary Career—Dr. John Brown—*Rab and his Friends*—Dr. Hutchison Stirling—*The Secret of Hegel*—Professor Balfour, "Woody Fibre"—His Graduation Address—Aggressive Religionists—The Speculative Society—Stevenson on "The Great Men who were Members"—The Pictures—Dispute with the Senatus Academicus—Early-closing Order—Deputation meets Committee—A Compromise—At the Bar—Went Circuit—A Brief at Derby—"Soup" at Sessions, and Dockers—A Reason why Sentence should not be Passed—A Sketch by Lockwood—Mr. Campbell Foster—First Civil Case—Mr. Digby Seymour, Q.C.—Conversation with the Judge, Mr. Justice Brett—A Counsel who applied for Adjournment—Mr. Justice Honeyman—Wrote a Book on Medical Jurisprudence of Insanity.

AS I do not intend these mere memories to be an autobiography—except in the sense that everything one writes is, in a way, a chapter in that egotistical compilation—I do not desire to go back far for my recollections. I am convinced that men's school and college days, although full of interest to the men themselves, are generally as dull as ditch-water to other people, and I only desire here to put one or two matters on record as to those earlier days.

I was, in the last year I spent at Edinburgh University, a member of Professor David Masson's class. He was

Professor of English Literature or Belles Lettres, and was one of those Scotchmen who had gone south and then returned to his native land with some *éclat*. He was an earnest man with a black visage and quite a lumbering delivery as a lecturer. He was editor of *Macmillan's Magazine*, and was engaged upon a colossal work, his *Life and Times of Milton*. He had my respect. Indeed, in those days I believed in great men, and when our heroes cease to be heroes and become ordinary men it is not well with us ; but it is undeniable that enthusiasms, like everything else, grow old and decrepit.

I do not know any man who is worth his salt who has not in his youth dreamed of a literary career, who has not tried his pen-hand, and has not hoped to make a reputation by a novel, a tragedy, an epic, or what not. I threw myself with enthusiasm into the work of the class. Masson himself had a quiet, slow-burning enthusiasm in his dark-lantern of a personality, and I was fairly successful and got the medal in his class for essays, and also a prize for a poem on the *Blindness of Milton*. Masson was exceedingly kind to me—asked me to dinner while I still remained in Edinburgh, and gave me several introductions when I came south to London. I did not, I fear, requite his kindness, for during that summer, in the long days that run into one another in those high latitudes, I wrote a novel and sent the manuscript to Masson to read. But he did read it, and gave me excellent advice, which I have valued more since than I did at the time. I used to see him occasionally at the Athenæum in after years, when the coal-blackness of his hair was turning grey like ashes ; and when he died, full of years, he was regretted by many and by an old student amongst them.

I only once met Dr. John Brown, the author of *Rab and his Friends*, a really good dog story, and it was at Masson's table ; where, upon the same occasion, Dr. Hutchison Stirling, the author of *The Secret of Hegel*, was also a guest. With the latter I had some fairly interesting conversations and afterwards a good deal of correspondence,

for I was a Hegelian in those days ; but, as I say, that was the only time I met Dr. John Brown. He said one shrewd thing of an uncle of mine—Professor Balfour—which I do remember, because it had a sting in it. Professor Balfour, who was Professor of Botany in the University and Regius Keeper of the Botanic Gardens, was invariably known to the students of those days as “Woody fibre,” or sometimes to the more learned as “Lignius tissue.” He was a little wiry man, with a big head, a fluff of white hair, and an effervescing ability, and he was an earnestly religious man. I remember once he was giving an address to students and graduates upon the great occasion of the conferring of degrees, which was called “capping,” when, instead of a sword-stroke on the shoulder which makes a man rise a knight, the application of a dirty old cap to your head makes you rise a doctor. This ceremony took place in the Assembly Hall, and Professor Balfour, who was reading his hortatory address, came to the scriptural quotation, “Prove all things : hold fast that which is good,” when inadvertently the whole of his manuscript slipped from his hand and fluttered like a snow shower to the floor. The students cheered at the appositeness of the accident, just as the Oxford students saw the joke when Goschen got his degree of D.C.L. soon after his foolish manipulation of Consols—someone proposed three cheers for him, but there was an amendment proposed that it should be “two and a half.”

That Balfour was a religious man was all to his credit, but that he should have been aggressive about his religion was a mistake. You can believe without brandishing your creed. I remember, as an instance of this holy aggression, that I was once staying in a country house in Scotland, and a clergyman, I have no doubt an excellent person, for he is now a prebendary or a canon or a dean or something quite important in the Church, was also a guest. I was leaving on a Sunday, and perhaps, like the Scotch railway companies, who withhold facilities on the Lord's Day, he did not approve of Sabbath-day journeys, for when I was

leaving he laid a friendly hand on my shoulder and said, "It is appointed to all men once to die, and after that the judgment," which did not strike me as a cheery "send-off." But Professor Balfour was something of that sort. He was religious on all occasions and worried about it, so much so that I think the description of him on that occasion by Dr. John Brown (and I have arrived at it at last), was not unfair. "Balfour," he said, "is like a terrier at the heels of the Almighty."

The only other thing I desire here to remember of those early days is my connection with the "Speculative Society." "The Speculative Society," said Robert Louis Stevenson, himself a member the year after I left, "is a body of some antiquity and has counted among its members Scott, Brougham, Jeffrey, Horner, Benjamin Constant, and many a legal and local celebrity besides." He might, as the Scotch say, have condescended on particulars as to some of these celebrities. William Creech was the pious founder, and there is in existence a portrait of him by Raeburn. Dugald Stewart, Sir James Mackintosh, John Gibson Lockhart, Lord Cockburn, Professor James Gregory, also painted by Raeburn, and who has left a painful name in connection with his "Mixture," Lord President Hope, the third Marquis of Lansdowne, John Wilson (Christopher North), Lord John Russell, Sir William Hamilton, and Robert Louis Stevenson have all been members. In my day Prince Alfred, afterwards Duke of Saxe-Coburg Gotha, and Prince William of Hesse were members while resident at Holyrood and attending classes in the University. They attended several of the meetings of the Society, but took no part in the debates, except perhaps as uninterested listeners. Stevenson, who joined the Society while I was still a President, I never met there, but we have all met his description of the old place in his *Memoirs and Portraits*.

"By an accident variously explained," he wrote, "it has rooms in the very buildings of the University of Edinburgh: a hall, Turkey-carpeted, hung with pictures, looking, when

lighted up at night with fire and candles, like some goodly dining-room ; a passage-like library, walled with books in their wire cages ; and a corridor with a fire-place, benches, a table, many prints of famous members, and a mural tablet to the virtues of a former secretary. Here a member can warm himself and loaf and read ; here, in defiance of senatus consults, he can smoke."

But the likeness to the dining-room was marred by the absence of the table, and although the fire and the candle-light—we were too proud to use any vulgar illuminant—live in my cosy memory, much more do the portraits of Scott with his hands on his stick and his nice, kind, commonish face staring at you, of Francis Horner with one hand on his knee and the other on a book on a table—a really fine portrait by Sir Henry Raeburn—and the one of Lord Brougham over the fire-place, with his rugged, ugly, sour face in a perfect rampart of collar and stock (by Sir Daniel Macnee). It was good for young men to have been associated, even by so slight a link, with a past which boasted of such men. And we in our day kept the flag flying. While I was a member and office-bearer, John Blair Balfour (afterwards Lord Kinross), Alexander Asher, Sir John Cheyne, Sir Adam Gib Ellis, Sir D. M'Kenzie Wallace and others were members of the Society.

I want to mention one incident which occurred while I was Secretary in 1865-66. During that year there was trouble with the Senatus Academicus. Before 1861 the Town Council of Edinburgh were the owners of the University buildings, but in that year the Senatus became the proprietors. On November 14, 1866, they intimated that they had resolved that the College gates should be shut at 11.30 p.m. Here then was a resurrection of an old dispute which had taken place between the Town Council and the Society in 1841, and which had been buried in that year ; and the Speculative Society was up in arms and on the war-path. It might, to less ardent and sleepier heads, have seemed not an unreasonable thing that young gentlemen (however

illustrious they were *going* to be) would have done well to curtail their speeches and bring their essays and discussions to an end before that hour. But that was not the way the question presented itself to us. It was intolerable, it seemed to the members, that a body like a *Senatus Academicus* should interfere with the freedom of speech, however long-winded. It was true that the free use of the rooms which we enjoyed was founded upon a somewhat dubious title. Still, the Society had beaten the Town Council in 1841, and was ready now to quarrel with its more academic successor. The fiery cross was out, and in January, 1866, a Committee was appointed to prepare and present to the *Senatus*, and if necessary to the University Court, a memorial on the subject. Much is done in Scotland by means of memorials. The Committee consisted of Lord Colonsay, the Lord Advocate (Moncrieff), Lord Cowan, Lord Curriehill, Lord Neaves (the cracked-voice singer of the Royal Society Club), Lord Ardmillan, Lord Mure, Sir William Gibson Craig, and others. An interview was asked for and a deputation of the Society waited on a Committee of the *Senatus*, of which Sir Douglas Maclagan was the convener. I remember the meeting well. The Society's rather high-handed views were presented to the Committee by Lord Colonsay, who shifted the onus of proof by beginning his statement by remarking, "We want to know."

I forget his arguments and those of the Dean of the Faculty and Lord Deas and Lord Ardmillan, but I remember the somewhat trembling abject look of the Committee of the *Senatus*. It seemed that they were upon their trial, and they were no match for a dictatorial College of Justice; and after what sounded like a sincere apology on the part of the *Senatus*, it was agreed that the College gates should be closed at 11.30, but that members of the Speculative Society should have egress at any hour, the Society paying for the services of a night porter. So that after all the tea-cup storm we were back where we were after our triumph over the Town Council in 1841. The Society, by a suitable resolution, thanked the Lord President and the other

"big-wigs" for their "energy and public spirit," and there—so far as I know—the matter has rested ever since.

After I was called to the Bar I went—I was informed it was the right thing to do—on Circuit and Sessions. At first I went on the old Midland Circuit, and although I suppose I learned something I earned nothing. No, that is not quite so. On my first circuit at Derby, when I was going into Court, a solicitor handed me a brief. It was marked two guineas and contained instructions to prosecute some poor half-witted person for having stolen some "reach-me-down" article from outside a shop in Derby. I acquitted myself with nervous intrepidity and secured the conviction of a hardened criminal who had been in and out of prison like a jack-in-the-box for a good many years and who was defended by long John Lawrence (afterwards Mr. Justice Lawrence). When the case was over and the solicitor was paying my fee—almost my first, mind you, and I was proud—I asked him, wanting to know how my meagre fame had come before me, how he had come to deliver his brief to me. And he answered with a candour which hurt my pride; "It was because you went into Court last." Well, I have been trying to "go in last" ever since, but my great success upon that occasion has not followed me.

At Sessions, however, besides getting what was called "soup," because the prosecution briefs at Leeds were ladled out all round, I had some important "dockers." Dockers are, or were—for I am speaking of a time long ago—instructions from a criminal in the dock without the intervention of a solicitor. I confess it went against the grain to take the one pound three shillings and sixpence—sometimes in quite miscellaneous coins—from the accused person over the dock rails. It might be wrapped up in some stingy piece of paper. But I had several of these and did my best for the poor accused persons, who might, I daresay, have said, like the convict who when asked whether he had anything to say why sentence should not be passed remarked: he hoped the Court would take into consideration the extreme youth of his counsel.

But that reminds me of a case where a man was tried for a crime—I think it was larceny—and was convicted, and when he was asked the same excruciating question, if he had anything to say why sentence should not be passed, did really say something to the point, for he remarked, “Well, my lord, I want to say this, that I was in gaol when the crime was committed.” It was ascertained that the statement was correct, and as he had made out a tardy alibi he was asked why he did not say so before and so save the time of the Court in trying him, and its face in finding him guilty? He answered with great legal acumen that he thought his previous conviction might have prejudiced his case.

In one of my “dockers,” or perhaps it was a case that came through a solicitor, there was a story, upon a low level, of course, of marriage, love by another like David’s love for Bathsheba, then jealousy and the sacrifice of the husband; like the putting of Uriah the Hittite—who ought to have been called the Hit at—in the front of the battle. I don’t suppose the parallel was exact, but it was near enough for a jury, and I referred to history thus repeating itself in the slums in my speech. On that occasion Frank Lockwood made a lifelike sketch of King David with a harp, who was, according to this cartoon, waiting in the passage to be called as a witness.

I remember one case at Sessions or Assizes which was the means of fixing a nickname either upon me or upon Mr. Campbell Foster. He was at that time one of the senior members of the Sessions Bar. He had been red-haired in his day, but was then turning grey. Still “in the ashes lived the wonted fire.” His face was round and fat and rosy, and he had grown in stoutness. He had made a florid speech for some criminal he was defending and had pitched his note of innocence too high for the possible merits of his shady client. I was young and was prosecuting, and thought it expedient to imitate the picturesque style of Campbell Foster, so told the jury that I had recently been at a fair and seen a show, and the picture outside represented a lion, the monarch of the forest, in his native jungle or on the

khaki plain, and depicted him with open mouth and terrible roar ! But inside the tent of the show there was no lion and nothing but a jaded wolf, and that that was an exact parallel to my learned friend's opening, the opening was the picture outside and his case when he came to prove it, was nothing but the jaded wolf. After that either Campbell Foster or I was called the " jaded wolf " on Circuit for some time.

I remember my first civil case on Circuit was a Breach of Promise action, in which Mr. Digby Seymour led me. He was an eloquent man, with a prominent waistcoat, a florid complexion, and great bulging eyes. The case was tried at Leeds, and I admit I was a little nervous, and probably I was blushing at the back of my neck under the two tickling tails of my new wig. I opened the pleadings and Mr. Digby Seymour opened the case, with some of the facts and a good deal of imagination. *Dichtung und wahrheit*. The proposal and promise we alleged the defendant had made was at a sale of furniture which was taking place at Alverthorpe, and my leader told the jury that at the sale there was probably an ormolu clock (I am sure it was an ormolu clock), and on the top of it a little gilt Cupid with his bow and arrow, and that that did the trick, and so on. When he sat down with an oratorical bump it was my duty to examine in chief the young woman who claimed damages for being jilted. I got on all right for a time : asked her her name, whether she had been at the sale at Alverthorpe, and the rest. Then I asked her if the defendant had proposed to her at the sale, and I was proceeding to some other matter when the Judge, Mr. Justice Brett, afterwards Lord Esher, said, " Don't you want to know whether she accepted him ? " I saw I had made a mistake, but determined to brazen it out, and said, " Oh, I took that as a matter of course, my lord." " Has that been your experience, Mr. Browne ? " asked his lordship, touching the imperial on his chin which was smiling. " Invariably, my lord," I said.

There was some laughter, but that was the only time, in those days, when I was fully reported in the evening papers with a headline.

When the case was over Digby Seymour said I had done very well. "But remember," he said, "you have a leader." I suppose it is the leader's privilege to make all the jokes.

It was, I think, at that Assize—for I did not attend many—that an incident occurred in the Criminal Court which is perhaps scarcely worth recalling. There was a member of the local Bar who certainly had had great abilities as an advocate, but did not give himself a chance of showing them. He lunched too well, and possibly began that meal too soon after breakfast. On the occasion I am referring to he came into the Criminal Court and asked the Judge if, as a matter of personal convenience (I think he ran the two last words into one another) the case of the *Queen v. Black* might not be taken that day. The Judge—I think it was Mr. Justice Honeyman, who had a brick-red face which Lockwood refused to sketch because pen and ink could not do justice to it—assented to the application, and so far the incident was closed, with some tittering amongst the members of the Bar. But within half an hour the same learned gentleman, having forgotten his application or himself, came in and made the same request.

"I told you before," said his lordship, with a little irritation in his voice, "that I would not take that case to-day."

The learned counsel, hoisting his slipping gown on to one shoulder, thanked his lordship, and retired with an assisting hand on the table. But a little later he came again and again asked that, as a matter of personal convenience, the case of the *Queen v. What's-his-name* might not be taken.

But this was too much for the placid temper of any Red Judge, and he fumed a little as he said,

"I have told you twice that that case will not be taken to-day."

Then the learned gentleman, with a somewhat unsteady flourish of his oratorical hand, said, "I thank your lordship, but your lordship does speak so indistinctly."

I think some of his friends prevented him making any more applications that day.

Meanwhile, although I went Circuit and Sessions without much profit except in experience, I was not idle. My father, a remarkable man in his way, had been Medical Superintendent of the Crichton Royal Institution at Dumfries. I say he was remarkable. He was a man of ability, and would upon a larger stage have been what the theatrical profession call "a star." He introduced—of course it was a long time ago—the humane treatment of lunatics into asylums. Those who want to know how lunatics used to be treated in the old days ought to read *Sir Launcelot Greaves* by Smollett. The sane at that time treated the insane as wild beasts, and made them wild beasts with their cages, their chains, their strait-waistcoats, padded rooms, and the rest of their harsh appliances. But although my father did well and was one of the first Commissioners in Lunacy for Scotland, he would have jumped much higher in the world if he had sprung from a more prominent position. I have a theory that the same ordinary talents go further if they start from a springboard of position instead of from the non-resilient Mother Earth. There are half of the Cabinet Ministers who would have been nobodies if it had not been for adventitious circumstances.

My father's connection with a great hospital for the insane had directed my attention to the question of insanity. My brother, Sir James Crichton Browne, now Lord Chancellor's Visitor of Lunatics, was at one time Medical Director of the West Riding Asylum at Wakefield. That fact also brought me into contact with those who in the human solar system moved in excentric circles. It was having this experience, such as it was, that suggested to me the expediency of writing a book upon the *Medical Jurisprudence of Insanity*. That I did not do merely for the enlightenment of a dark public, but with a view, if possible, to secure a legal practice in connection with the probate of wills when the testamentary capacity of the testator is one of the questions, and when also the question of undue influence of the strong mind on the infirm weak one may come in question in our Courts. That

was my hope; but from the day when I published my book on the *Medical Jurisprudence of Insanity*, which was in an enlarged edition republished in San Francisco in 1874—and the publishers paid me half the sum for preparing the American edition which they promised, which is perhaps characteristic of American business transactions—I have never had a case in the Probate Court and never been consulted with regard to any matter connected with wills, although I had the case of *Banks v. Goodfellow and Others* at my itching finger-tips. But although that Court was drawn a blank, I soon after got my first Parliamentary brief, and my attention was directed from Mania and Melancholia and Dementia to questions of “Running powers,” “Special adaptability,” “Compulsory purchase,” and other matters of that sort, which proved much more remunerative than my researches into the “rooted sorrows” of mental disease or the vagaries of brain troubles.

CHAPTER II

THE PARLIAMENTARY BAR AND WHAT IT DOES

The Parliamentary Bar and What it Does—Public Ignorance and Want of Interest in its Doings—"New Silks"—Thackeray's Little Dinner at Timmins's—Men who made Fortunes at the Bar—Railway Mania, 1845-46—The Use of Local and Personal Bills—The Compulsory Purchase of Land—Competition between Rival Companies—Tears in Court and Laughs in Committee—Railway Amalgamations—The Hull and Barnsley Railway and the North-Eastern Monopoly—The Manchester Ship Canal Bill—Mr. Adamson—Opposition of Mersey Dock and Harbour Board—Lord Kelvin as a Witness—"Cut-throat" Competition—The Mono-rail or Lightning Speed Railway—Hansard's Report of Debates on First Liverpool and Manchester Railway Bill—Electric Traction on Railways—Advantages of—Some Great Water Bills—Municipal Trading—Glasgow's Proposal to take Loch Voil—Sentiment and Legislation—Gas Works and Competition—Districting London—Alkali Manufacturers and Monopoly—A Witness not cross-examined.

THE public are very ignorant as to the Parliamentary Bar and its doings. They know a good deal about the Old Bailey, and follow the haggard proceedings in that Court with the same interest that they bring to bear upon Gaboriau's "M. Lecoq." They have their eyes, too, too often upon the Division of the High Court presided over at present by Sir Samuel Evans, which is a laundry for a good deal of dirty linen, but as to what is done at the Parliamentary Bar, as to the duties performed by Committees of the Houses of Lords and Commons, they are profoundly ignorant, and possibly, if they knew, they would be callously indifferent. Indeed, a good many matters connected with

the "lawless science of the law," or the more lawless business of legislation, are outside their narrow horizon. I remember once referring my lady neighbour at a dinner-table to the appointment of a "batch," as it is called, of new King's Counsel, and I referred to that baker's dozen of rising gentlemen as the "new silks." For the instant I interested my neighbour, who was evidently under the impression that they came from Paris, and saw possibilities of costumes beyond the dreams of vanity.

But it is a fact that the Parliamentary Bar is employed upon very important public work, and that Committees of Parliament often pass private Bills which may benefit the community and at any rate prove less harmful than the public measures which bulk so large in the exaggerated estimate of the public.

Thackeray, in *A Little Dinner at Timmins's*, founded his story of that tight-packed and ostentatious hospitality in Lilliput Street on the fact that Timmins, of Fig Tree Court, Temple, had a brief from a firm in Great George Street in connection with the Lough Foyle and Lough Corrib Junction Railway, and on the fact that the fifteen guineas a day which he was to get for consultation and refresher was calculated by his wife Rosa's indubitable arithmetic to amount to four thousand five hundred pounds a year. It was on the strength of this that the Timminses "launched out." He gave presents to his wife, and the great dinner to which the Earl of Bungay was asked. Then there was his flirtation with the young woman at Fubsby's shop, where he went to order the ices. But the Timminses were left in an awkward lurch, for, as it was an Irish case, we may say, a reconciliation broke out between the parties when the Bill had only been before the Committee for seven days, and the promoters and petitioners came to terms, and there was an end of Timmins's fifteen guineas a day.

Many people are apt to miscalculate the fortunes that are made at the Parliamentary Bar as Rosa Timmins did, and if they launch out as that rising gentleman did in Lilliput Street they may possibly have to eat humble pie when the



LORD GRIMTHORPE (SIR EDMUND BECKETT, K.C.)
Photo. Elliot & Fry

bills come in. Of course, large fortunes have been made at the Parliamentary Bar in the past, but they have not been made out of one case, like the Lough Foyle and Lough Corrib Junction Railway Bill, but out of an accumulation of such Bills all coming on at the same time in the three or four crowded months of the Parliamentary Session. At that time the work thrown upon successful members of the Bar, and upon Committees, is excessive. It is said of a somewhat recent leader of the Bar that he admitted that upon one occasion he had nineteen different cases to attend to in one day; and there is a well-known story of Austin, who, in the busiest time in the Lobbies, was found riding in the Park, and who explained that by his absence from Westminster he was doing equal justice to all his clients. But Austin and Talbot, and Hope Scott and Beckett, were at the Bar in 1845-46, at the time when there was a railway mania, when hundreds of railway Bills were deposited in Parliament and had to be discussed in Committee. That insane rush of speculation in a particular direction is of a piece with all the proceedings of the nation. English people are always unprepared either for the advent of war or for the progress of the triumphs of peace. They hesitate for a long time on any brink, and then plunge. The same hanging-back, followed by a headlong rush, has taken place in connection with the promotion of tramways in this country, and also in connection with the finding of capital for the exploitation of electricity for lighting, and later for power. It is in these times of speculative rashness that the members of the Parliamentary Bar are busiest, and that the great fortunes which have undoubtedly been the reward of successful leaders have been made in the Lobbies at Westminster.

But, apart from these epidemics of legislation, the work done by Committees of Parliament is exceedingly important. It is quite obvious that no great, sprawling enterprise like a railway—even a Lough Foyle and Lough Corrib Junction Railway scheme—could have been carried out without the assistance of Parliament. I have met people who, like those who regard Conscription as an insult to the

great doctrine of individual liberty, have looked upon the compulsory taking of land for enterprises which were to be of public utility as an outrage upon the sacred institution of private property. But most people have got over that infantile notion, and are persuaded that if it were left to promoters to secure concessions from landowners, so as to enable them to construct a railway, say, the greed of the owner would take the form of blackmail, and so frustrate the project which was intended to meet a public want. This, then, is where Parliament comes in ; this is where Local and Personal Bills, as they are called, have their uses. When it is proposed to carry out any enterprise which involves the taking of land, Parliament, by a Committee, inquires as to the real importance of the project, and if counsel for the promoters can persuade the Committee that the project is one of public expediency, those people who have property which must be acquired for the scheme are compelled by Parliament to part with it, but always on the terms that they are paid not only a fair price for the land taken, but also compensation for any consequential damage that may be done to the rest of their estate.

But, even without the compulsory acquisition of property, it is obvious that one enterprise might do irreparable injury to another. Thus, if a railway has been constructed between two towns, A and B, the authorisation of another railway between the same points might by competition make the first concession either valueless or at any rate not so valuable. When, therefore, the promoters of the second railway ask for Parliamentary authority, they are likely to be opposed by the existing company on the ground of "unnecessary and unfair" competition, and the specious argument that it is a waste of capital to make two undertakings when one will serve all the public wants will be brought before the Committee. I have heard and used such arguments for the last forty years. The question in such a case which has to be determined by a Committee is as to whether, in the public interests, the second line should be sanctioned. In many cases vested rights have been disregarded and competition

has been sanctioned, while in others the promoters of the competitive scheme have had their Bill rejected presumably because they did not make out a sufficiently strong public case. It will be gathered that in such cases, while there is a necessity for the gift of clear exposition and explanation upon the part of counsel, there is not much room for the impassioned oratory which sometimes decorates criminal cases. I was once down at Sessions at Taunton on a dry-as-dust rating case, and was urged to go into the other Court to hear Sir Charles Mathews, the Director of Public Prosecutions (as he now is), defending some notorious criminal, and, as I was informed, I would see him "weep real tears." But, although that sort of thing is not so much in the line of men who practise in Parliament, we had one member, Sir Mordaunt Wells, who not infrequently had briefs from land-owners who were resisting the compulsory expropriation which was proposed; and it certainly was believed that Sir Mordaunt, who had an inclement disposition, had upon more than one occasion wept over the injustice which was going to be done his client. But although tears are not very often at the service of a client, smiles and laughter always are, and I can remember many cases which have been laughed out of Court by the theatric tactics of a nimble counsel. But to return to competition. The same sort of contest as the one I have suggested has gone on for years between the promoters of tramways and light railways and the companies which owned and worked railways. The result of the construction of these road-railways has in many cases been disastrous to existing undertakings, and much of the suburban and even inter-town traffic is now carried by these, whose promoters have the advantage over railways of cheaper construction, seeing that they use the roads and highways for their lines instead of private land which has to be purchased. But it may be useful to give an illustration. Not only has Parliament, in its haphazard way, favoured competition between railways; it has, with what would seem a short-sighted policy, allowed and in some instances has been forced by circumstances to allow of amalgamations which had, of

course, the effect of putting an end to the very competition it had been encouraging. When the process of absorption of the small serpents by the Moses-big serpents had gone on for some time, Parliament in 1872 appointed a Select Committee to inquire into the whole question of amalgamation. It appeared from the report of that Committee that Parliament was shutting the door after the steed had been stolen, and that the North-Eastern Railway, as it then was, consisted of about thirty-five separate systems which had been amalgamated, and was therefore a huge monopoly occupying the whole of the north-eastern portion of England. But the plague—if it was one—of serpents swallowing serpents was not “stayed.” The process has gone on, and the North-Eastern Railway to-day consists, I should say, of no fewer than fifty separate railways, which have been grafted on the North-Eastern stem. The result of that monopoly was said by some to have been beneficial and by others to have been prejudicial to the public interests. Amongst the protestants was the town of Kingston-upon-Hull. In 1880 the people of Hull became alive to the fact that the North-Eastern Railway Company was, as they said, “favouring the northern ports,” where they were the owners of the harbours, on the Tyne, as against Hull, where, at that time, the docks were in the hands of a separate company. Thus it was said that the rates of charge by railway from Leeds, which was only fifty miles from Hull, were as high as those which were made by the North-Eastern to the northern ports, which were more than double the distance from Leeds. There was, it appeared to the people of Hull, nothing for it but to promote a new and competitive railway and dock, and in 1880 the railway and dock which is known as the Hull and Barnsley undertaking was promoted by an independent company with the express purpose of breaking up the North-Eastern Railway monopoly. The enthusiasm with which the project was supported was unique. The Bill was fought in Parliament both by the railway company and the dock company, but it passed into law, and Hull had a Mafeking night when it achieved its freedom. One might have

supposed a railway Bastille had been blown up. Contrary to the usual practice of Parliament, the Corporation of Hull was allowed to subscribe £100,000 to the capital of the new company, but when subscriptions were asked from the public it was a surprise to many that the enthusiasm ran to pounds, shillings, and pence, but, as a fact, although only some two or three millions were required for the construction of the authorised railway and dock, the capital was over-subscribed, and £7,000,000 was offered by the public. After the passing of the Bill there was a public demonstration of rejoicing in the town—processions, bands, speeches in the park, and the inevitable banquet. There were four counsel for the promoters—Mr. Granville Somerset, Q.C., Mr. Pember, Q.C., Mr. Balfour Browne, and (if I remember aright) Mr. Cripps (now Lord Parmoor)—and on that great occasion in Hull one of these gentlemen, with acceptance, in a short speech, compared Hull to Cinderella, and the two Tyne ports to her two more favoured sisters. But he went on to say that a fairy godmother had come in the person of Sir Gerrard Smith—the principal promoter—and had taken Hull to the ball at Westminster, and had wedded her to the Prince of Modern Times, a Railway, [and that he, the counsel, was proud to have been one of the four mice that drew the coach.

A somewhat similar enterprise on the other side of the kingdom was put on foot by the indomitable promoters of the Manchester Ship Canal.

It was an excellent, although not original, idea to make Manchester a port, although it was thirty-five miles from the sea. I say the idea was not original, for it was discovered that when various railways running from north to south and crossing the rivers Mersey and Irwell had been authorised, provisions had been inserted in their Acts putting an obligation upon the promoters of these to substitute swing bridges for permanent solid structures over these rivers at any time when they were made suitable for ocean-going vessels. But, like much of the legislation that is embodied in Acts of Parliament, all these sections were regarded as

quite dead and buried letters, until in the early 'eighties it occurred to certain enterprising people in Manchester to promote a Bill for the construction of a ship canal. One of these was Mr. Daniel Adamson, a rough man of obstinate courage, and who, like the British Army, did not know when he was beaten. The Bill which was first promoted proposed to authorise the construction of a large locked canal from Manchester to Runcorn, and then, by means of a dredged channel down the centre of the Mersey Estuary, to continue the ocean road to the Liverpool deeps. This Bill was opposed by the railway companies that carried between Liverpool and Manchester, by the Mersey Dock and Harbour Board, by Birkenhead, and a great number of other public bodies and private persons. The main ground of the opposition was that the canal would take traffic away from the existing docks and railways, but one of the most cogent arguments was that the dredged channel down the Mersey would have the effect of silting-up the docks at Liverpool and Garston. Of course, too, it was urged that the money for such a wild-cat scheme could not be got, and that if the canal were constructed no ocean-going ships would use it. There were to be cross-currents in the canal which would make it useless as a waterway. Lord Kelvin (then Sir William Thomson) was examined as a witness against the Bill, but whether on the question of the silting-up of the Mersey or the cross-currents in the canal I forget, although I should not forget, for I cross-examined him. The Bill, however, passed the first House and was rejected in the second. It was here that the heroic obstinacy of Lancashire came in. The promoters went in the next Session of Parliament for a somewhat similar scheme, and proposed to make training-walls in the Mersey, and in the teeth of the same vigorous opposition. Again the Bill passed a Committee of the first House, and was opposed again and rejected in the second. But on this occasion one of the opponents, the Mersey Dock and Harbour Board, made a tactical error. Napoleon said it was unwise to fight too often with the same enemy, for he got to know your methods; and on this

occasion the Dock Board, by its able engineer, Mr. Lister, suggested that if, instead of making a channel in the Mersey, the promoters had made a locked canal on the land at the margin of the estuary between Runcorn and Eastham, there would have been no objection to the scheme. This—I think, like the good Samaritan, who promised to pay the innkeeper for housing the man who fell among thieves—they said, hoping to see the face of the promoters no more. But Lancashire's back was up, and in the third session they promoted a scheme in which they adopted the suggestion of the opponents, and upon this occasion the Bill passed both Houses and became an Act. There were financial difficulties in its period of gestation, but ultimately these were got over with the assistance of Sir Alexander Henderson (now Lord Faringdon) and the canal was made and opened for traffic by Queen Victoria in 1894. It was a great, but in a sense a charitable, undertaking, for, although the waterway from the sea to Manchester and other South Lancashire towns has been of incalculable service to the trade of the district and carries a traffic of between three and four million tons a year, it is a question whether those martyrs—the ordinary shareholders—will ever get an adequate return on their philanthropic investment. One of the immediate gains to the trade of South Lancashire was a reduction of the railway rates to one-half of what they had been before the canal was constructed. But beyond that, it is a fact that no one in Manchester or its surroundings would deny that ever since the canal has been in operation the trade of that district has been singularly prosperous; and, although some of the expert witnesses as prophets had predicted the ruin of the Mersey Dock and Harbour Board and the port of Liverpool, there seems to have been a lying spirit in the expert mouths of these excellent witnesses.

But although in the instances given you see that competition in some instances is of inestimable benefit to a trading or travelling public, in other cases it is questionable whether competition is a matter for congratulation. At one time there was active competition between the railway

companies which had lines between Edinburgh and Glasgow, and it resulted in a cutting of rates and fares between these two termini. So much was that the case that a person going from the one city to the other was carried the whole distance for sixpence, while the fares to intermediate, and therefore non-competitive, stations amounted in some cases to six or seven shillings. No doubt these were halcyon days for the Scottish travellers. Anything under cost price commends itself to that cautious and bargaining nation. But the railway companies, after a time, discovered the folly of their cut-throat competition, and agreed not to compete, and since then, no doubt, they have been taking back in fares from the public what they gave away with such a lavish hand in those foolish days. Indeed, there is a saying, which is ascribed to Stephenson, that if combination is possible competition cannot exist.

In speaking of the Manchester Ship Canal, which has made Manchester the fourth port in the kingdom, I was referring, of course, to the advantages connected with the conveyance of goods, without breaking bulk, to their destination ; but it is certain that, since the canal existed, the passenger traffic between Liverpool and Manchester has been greatly increased, and, although there are excellent fast trains that carry people between the two cities in a very short time—certainly under an hour—that did not satisfy the travelling public, and some ten years ago they promoted a mono-rail railway between Manchester and Liverpool, the cars upon which were to be run by means of electricity at the rate of 110 miles an hour and do the whole distance in less than twenty minutes. The project was the invention of M. Bere, an ingenious engineer, and had been tried experimentally at the Brussels Exhibition, and had also been installed at Ballybunion in Ireland. The way out of Manchester was through Salford, and I remember I got into the black books of my excellent clients, the Corporation of Salford, by describing, in my speech for the promoters, Salford as a "mere squalid suburb of Manchester." I believe the Corporation considered whether they should withdraw the

general retainer I then held for them; but they were generous and did not do so, I suppose because they came to the conclusion that I could say something as derogatory of Manchester if the necessity for it arose. But the scheme for the lightning-speed railway was opposed by all the rival carriers—the London and North-Western Railway, the Lancashire and Yorkshire Railway, the Cheshire Lines Committee, and the rest. Every sort of objection was raised to the scheme. It was not a mono-rail at all, the opponents said, but a five-rail railway. It never could run at anything like the speed mentioned—indeed, it would always be quicker to go by the existing routes—and other like objections. But in such matters history repeats herself; indeed, to-day is only an echo of yesterday. And under that impression I had recourse to Hansard to see what had been said when the first railway was proposed to be constructed between Liverpool and Manchester in the years 1825 and 1826. Really, these old volumes of Hansard are very interesting. On March 2, 1825, Sir J. Newport asked the House of Commons to assent to the Liverpool and Manchester Railway Bill. His grounds were that :

“In proportion to the commerce of the country it was necessary that increased facilities of conveyance should be provided. It was said in the present case that the canal between Manchester and Liverpool afforded at this moment sufficient means of conveyance between these two places . . . but he was inclined to think that though the existing modes of conveyance might have been adequate a year or two ago, that was not now the case. This project, therefore, must not be considered as one of those wild and rash speculations which the House ought to view with jealousy and suspicion because they could not be serviceable to the country and must be injurious to those who embarked in them.”

Mr. Huskisson, who, by the way, lost his life when the railway he was advocating was opened in 1830, was also in favour of the Bill. A Mr. Philips hoped the House would give the measure the most serious consideration :

Mr. Huskisson was the first to be killed

"It appeared that there was a large body of landed proprietors through whose estates this railway was to be carried, and they complained of it as likely to prove a great annoyance and nuisance."

He went on to say :

"With respect to the celerity of carriage, they had been told that on these railroads goods were conveyed at the rate of ten or twelve miles an hour, while on canals the average was four miles an hour. This assertion had been repeated over and over again in pamphlets and newspapers, and in proof of its truth an experiment was publicly made. The advocates of the railroad appointed a day for the trying of the experiment with a locomotive carriage, and the trustees of the railroad, as well as others, who were interested in the business, attended. Now, what was the result? After a fortnight's preparation, and having selected the best locomotive engine they could find, the average rate on a plane surface was not three miles and three-quarters an hour, and on an inclination it was not more than four miles an hour."

He said :

"he had been for many years superintendent of a canal and of a railway, and he had said that a more extraordinary delusion never was known than that of supposing a railroad was superior to a canal. . . He was of opinion that a railway could not enter into successful competition with a canal. Even with the best locomotive engine the average rate would be but three and a half per hour, which was slower than canal conveyance."

Mr. Brougham supported the Bill. The Bill was rejected. In the following session the Bill came up again on April 6, 1826, on the third reading. Mr. Stanley, in opposing the Bill, undertook to show "that the advantages of cheapness and rapidity which were expected from this Bill would by no means result. He would not object to it if any case of public

necessity or great public improvement required it." He repeated the statements made in the previous session as to the snail's pace of locomotives and the swift feet of canal boats. A Sir Isaac Coffin said :

"there had been a great deal of manœuvring about the Bill. But he would not consent to see widows' premises invaded or the premises of any humble person invaded to promote the views of certain high persons. There was no necessity for this Bill. He had never heard of a ship being delayed a day in the port of Liverpool on account of want of sufficiently rapid conveyance from Manchester. . . . He would ask how any person would like to have a railroad formed under his parlour window? The present was one of the most flagrant impositions ever known."

A very interesting debate, and Sir Isaac Coffin, notwithstanding his lugubrious name, must have contributed to the hilarity of the occasion with his painful reference to the widows. At a later date a prospective candidate at an election meeting was asked if he would give widows votes, and replied to the heckler, with some flippancy, that he would like to see the widows. But the Liverpool and Manchester Railway Bill was read a third time upon that occasion by 88 against 41, a majority of 47, and, as we know, the expresses run between Liverpool and Manchester at a speed of fifty or sixty miles an hour instead of three, and the patient and plodding canal boat still proceeds at a non-apoplectic speed along the sluggish waterway. I fear this has been a long and tedious digression from the description of the mono-rail railway, but it really is interesting to see how the exploded sillinesses of 1825-6 came to life again against any proposal to give further facilities of travel to the public. Notwithstanding the opposition, the Bill to authorise the mono-rail railway passed.

But it would seem that, while Parliament proposes, it is the capitalist that disposes, and the money never was found to carry out the project ; and I am sorry, for I should like to

have seen the great experiment in quick electric traction tried. But, although that experiment in electric traction was not tried, some remarkable progress has been made in the last ten or fifteen years in that direction. It is not only the method of traction upon all our tramways ; it is being adopted by most of our railways. Indeed, it has been said that in fifty years there will not be a steam locomotive to be found anywhere except in the British Museum, side by side, I suppose, with the flint arrow-heads of our ancestors. Of course, electric traction has some great advantages over steam haulage. As our trains have become longer, our engines have necessarily to be made heavier, and nowadays the engines weigh one hundred tons and some of them even more. Now before you can move a train you must move that immense dead and useless weight. On the other hand, in relation to electric traction your generating station has not to be moved with the travelling load, but rests on the solid earth and sends its energy by means of wires or rails to the motor in the vehicle which has to be moved. But there is another advantage that electric traction possesses. The traffic between Liverpool and Southport is very considerable. The trains arrive at the Exchange Station in Liverpool, and the road between the two places is now worked by means of electricity. In the case of a train hauled by a steam locomotive the station of arrival has to be large enough to allow the locomotive, which comes in in front of the train, to get round its train before it can proceed on its outward journey. But with the traffic which is being done at Exchange Station the provision of these extra roads for the steam haulage would have involved the doubling of the accommodation of the station. With electric traction, seeing that there is no locomotive to move from one end of the train to the other, and that the "coaches" run out just as they run in, the station is large enough for double the traffic, and the Lancashire and Yorkshire Railway Company has been saved the expense of largely increasing its terminal station, which might, in that crowded part of Liverpool, have cost something like a million pounds.

But I have been speaking as if the whole duty of Parliament and its Committees in relation to local and personal Bills had to do with railways, but that is far from the fact. Great water schemes, like the Loch Katrine supply to Glasgow, the Vyrnew supply to Liverpool, the Thirlmere supply to Manchester, and others, required Parliamentary sanction, and over these, in the past, many long and interesting inquiries have taken place before Committees of Parliament. It has been pointed out that Parliament has not been very wise in its administration of the water resources of Great Britain. We hear that in time of war it is necessary to organise and mobilise the human resources of these islands—or one of these islands, for Ireland has been excluded from the Military Service Bill—and that we cannot win the war if employers and employed are to scramble for the pecuniary results of industry as they did in the times of our abundant peace. But, with regard to the water resources, there has been no forethought, and it is only now, when the principal available sources of water supply have been appropriated by some of the greater and richer communities, that some people begin to think that our legislation has been singularly improvident. That available sources are very nearly exhausted is shown by the fact that, not many years ago, the head waters of the River Derwent were sought as a source of supply by the towns of Derby, Leicester, and Sheffield. Each of these towns promoted a Bill for the appropriation of these pure head waters, the first two towns claiming the right because they were in the watershed, and Sheffield because it was nearer the site of the proposed impounding reservoirs.

Each of them not only promoted a Bill, but opposed the Bill and laughed at and scouted the claims and pretensions of its great industrial neighbour. The Committee of Parliament to which these Bills were referred and before which the town of Nottingham also appeared with a claim to the Derwent, and of which Sir John Brunner was the chairman, somewhat wisely thought the matter should be settled between these towns by agreement, and sent them away, telling

them to put their heads together. And as the heads in question were not wooden heads—as were the heads of the Dean and Chapter of St. Paul's, according to the Dean himself, when it was proposed to lay down a wooden pavement, for he said, "They had only to lay their heads together and the thing was done"—they came to an agreement, and formed the Derwent Valley Water Board, and apportioned the waters and the expenses between them. But it is obvious that, instead of allowing every town, like the Smith of Perth in Sir Walter Scott's novel, "to fight for its own hand" and to go with its horse, foot, and artillery of counsel, engineers, and other experts, and take whatever they were able to appropriate, it would have been better to consider the whole question of the water resources of the country and the present and future needs of the population. It is only by such wise means that there can be justice done between large and small communities. Many large communities have appropriated sources which yield more water than their present needs or future requirements can justify, and have become great water shops, selling water to the smaller communities, and in most cases making a profit out of them. It is in this way that the small end of the wedge of Socialism, which we call municipal trading, has been introduced, not only in relation to the supply of water, but in relation to the sale of gas and electricity. Not so long ago Birmingham Corporation made a profit of £70,000 a year out of their gas undertaking, which went in relief of rates, and enabled the Corporation to spend a great deal more money than they would have been allowed to do if all the burden had fallen directly upon the ratepayers' grudging pockets.

But the great water schemes I have mentioned are in their way great engineering triumphs, and the plentiful supply of pure water to these great towns must have had a great effect upon the death-rate in these places, for it is where men are crowded together that there Death is in the midst of them. But the invasion of these hill fastnesses or lake districts was strenuously resisted, in many cases not only by landowners

who wanted to make money out of these "marauding" towns, as they called them, but by sentimentalists, who wanted to make reputations out of their æsthetics. Thus when Manchester applied for a Bill to take the waters of Thirlmere to slake the thirst of South Lancashire, there were vigorous protests against this corporate vandalism. The Bishop of Carlisle even made a joke, and said that if the Corporation got the whole of the watershed—and that was part of the Bill—they would introduce "villas and everything that was villainous into the district." I remember, too, the sentimentalists who were represented by Mr. Pember—himself a poet—called a son of Wordsworth as a witness against the Bill. He was a nice, mild old gentleman, who spoke in a whisper, and it would have been almost cruel to cross-examine him.

Only two years ago the Corporation of Glasgow—which asserted that it was nearly at the end of its resources, although it had appropriated the waters of Loch Katrine and Loch Arklett—came to Parliament with a Bill to authorise the construction of a dam and the appropriation of the waters of Loch Voil and Loch Doine. It is an odd thing that, comparing Glasgow with other great towns, it is found that it uses a great deal more water per head of the population than any of them; but whether that is because the people of Glasgow are cleaner or dirtier than other people it would be impossible to determine. I do not believe that it is because they "drown the miller," as they call it, when too much water is put with the whisky. We have heard from that district a good deal about the dilution of labour, but that would be a heinous dilution, indeed. But when Glasgow promoted its Loch Voil Bill, the sentimentalists again showed their shocked faces. This time it was not the Lake District, with its memories of Wordsworth, Southey, Coleridge, and De Quincey, that was being invaded. No, it was the Rob Roy country, the unique loveliness of Loch Voil, and Glasgow was now going to "wound patriotism in its tenderest part," "rob Scotland of a unique inheritance of beauty." It is true that the house where that somewhat

disreputable raider and robber, Rob Roy, was born, or was said to have been born, was in ruins. His grave in the churchyard—it was doubtful whether his body was there—would not have been affected by the Corporation works, and a stone or boulder which was called his stone would have been submerged by raising the level of the lake if it had not been removed to a higher position on the hillside. But these outrages were quite enough to stir to their dregs the souls of those who had read Scott's novel or had seen Loch Voil from the train, and the action of the Corporation was condemned by Canon Rawnsley and by Miss Marie Corelli in terms which were not meant to be measured. I remember, according to Miss Corelli, the people of Glasgow were said to be "trafficking their souls away for greed of gold and selling their honour for so much cash down."

There used, in the old days, to be a somewhat similar sentimental objection to railways. It was because of some such objection that the Great Western main line was not allowed to run through Windsor, and was held at arm's length from England's crown at Slough, and many of the stations in our towns have been kept out of the centre and condemned to the suburbs. Gas-works, too, were objected to, perhaps upon better grounds, and there is a standing order of the House which gives any proprietor within 300 yards of the proposed gas-works a *locus standi* to oppose the Bill. But the sentiments of to-day are very far from the sense of to-morrow. Some interesting questions have arisen in connection with gas Bills other than those with regard to the site of the works. At one time there was active competition between gas companies in towns. It was thought that the competition between them, like the competition between ordinary traders, say in bread or butcher's meat, would keep down the price to the consumers. It is now known that competition in many trades leads to combines, or unions, or trusts. But in those old days competition was the creed of Parliament. So it came about that there were two pipes belonging to rival companies in all our streets when in many cases one would have done, and

therefore in many cases far more capital expenditure than was necessary. It was seen by the companies that if you had two pipes when one would be enough the price of the gas supplied must be higher, for the price must cover the interest on the unnecessary capital; and as they saw their way to increase their trade by means of "cheapness," and not by "dearness," they applied to Parliament to be allowed to district London so as to allow each company to have a district of its own, in which district it would, of course, be regulated by its own Act of Parliament as to price, illuminating power, pressure, sulphur compounds, and other matters, but would no longer be in competition with another company.

But although the Bill was founded on common sense, Parliament could not see its way to pass it. It still thought competition was a good thing. Shortly afterwards the gas companies, in spite of Parliament, agreed not to compete, districted London for themselves, and then Parliament passed an Act to make this small illegality legal.

I have mentioned that in the sale of gas the consumer was protected by a restriction of the price that could be charged, by regulations as to the quality and pressure of the gas supplied, and as to the profits which could be divided amongst the shareholders. But Parliament had gone further in this direction and had declared that if the company had got its maximum dividends and its reserve fund full, it was then to be competent for a Court of Quarter Sessions, at the instance of consumers, to reduce the price of gas. This machinery, like all machinery which involves the creaking of a Court, did not work well, and some clever person invented what was called the "Sliding Scale," which was in a sense the introduction of co-operation into gas undertakings, for it made the shareholder and the consumer to some extent partners in the gas-works. The sliding scale is this: Parliament, instead of, as in the old days, fixing a maximum price for 1,000 cubic feet of gas, which price could not be exceeded, now fixes a standard price which can at the pleasure of the company either be increased or reduced. If

it is exceeded the company's dividend is reduced. If the price is reduced the company is entitled to divide a larger dividend than what is called the standard dividend. The object of this ingenious contrivance was to reward the company for its economical working and give the consumer the benefit of some of the savings effected, or, on the other hand, to punish the company if, through mismanagement, it had to exact a larger price from the consumer. This sliding scale section is in almost all the gas Acts of our day, and it has, on the face of it, a look of great fairness. But there are two things to be borne in mind. It is unjust to the consumer if the standard price is fixed, as it often is in the dark, too high ; and, further, that the rise or fall in the price of gas is not so much due to the excellent or negligent working of the company's undertaking as to the rise and fall in the price of coals and residuals.

We have had, as we know, a Tariff Reform campaign on the political field of this country, and since the war has convinced us that we have enemies there seems some prospect of a tariff war soon after peace is established. Of course, we are all familiar with Mill's admission that protection may be legitimate and useful in the case of a young and rising industry, and some people have failed to understand why it should not also have its usefulness in preserving an old and existing industry. Protection is in the nature of monopoly, and we are familiar with the monopoly which is granted to authors under the law of copyright and to inventors under the patent laws. But not long since there was in the Lobbies an interesting attempt upon the part of the alkali trade to procure protection for their own industry against the competition of gas companies and corporations manufacturing gas. The attempt was made by the opposition of the alkali makers to certain private Bills promoted by companies and corporations to secure in these the insertion of a clause prohibiting the promoters from manufacturing residuals by means of materials purchased from any other gas company or corporation. There never was such a bare-faced attempt to secure a monopoly for a

particular trade. But the bold often succeed, and clauses were, at the instance of the alkali manufacturers, inserted in several private Bills. But Parliament was a little in doubt as to whether these chicks, its Committees, had not gone too far, and appointed a Joint Select Committee to consider the matter. That Committee reported against the clause, or, in other words, refused to confer upon the alkali trade the monopoly it was desirous of.

Electricity as an instrument, and not as a toy, has been the product of our time. We may have seen electric light at the Polytechnic Institution long ago, but electricity as an illuminant and as a source of power is all of to-day. The first Electric Supply Act was passed in 1882 and the second in 1888, and the early private Bill legislation which followed was all on wrong lines. London was given over to a large number of comparatively small companies, and these were prevented combining with, or supplying electricity to, one another. Of course these were the early days, but it soon became evident that the production of electrical energy at a great number of small stations, some of them with poor facilities for obtaining coal, was economically nonsensical; and that the provisions by which these small companies were to be purchased at the end of forty-two years by small local authorities were clauses which were framed on the same foolish lines. Attempts were made to get a Bill for the formation of a company and the construction of a great generating station on the Thames, which was to supply energy to all the authorised distributors; but these efforts, although there was much to be said for them, were unsuccessful, and, as a fact, the legislation with reference to the supply of electricity to London is still in a state of chaos. In the country, however, some power companies have been successfully established and are doing good work in supplying electricity for power to manufacturers, as well as light to ordinary consumers.

I said the locomotive steam-engine was in this fight for life and survival of the fittest destined to go to the wall. It is true, too, of the small manufacturer's steam plant. It will

not pay him to renew his plant when he can get his power from a company or corporation at the low rate per unit at which many of them are now supplying. I have referred to electricity as a means of traction, and am reminded of a case in which a large and important tramway company was proposing to run a new line down a suburban road which was lined on each side by stucco villas and pampered trees. The inhabitants objected to the tramway and petitioned against the Bill. I had the misfortune to appear for the promoters, and had to cross-examine some of the suburban worthies. At last a nice, elderly, timid lady was put in the witness chair. I saw that she was reluctant to give evidence ; but as she was the daughter of an Earl and was called Lady Mary, the solicitor for the petitioners, no doubt thinking that that fact would impress the "labour members" on the Committee, insisted, and she was called. She gave her evidence nervously, and I was loath to cross-examine such a nice, shrinking woman.

I asked her if she was aware that the tramway in question was to be worked by electricity ? And she said, "Oh yes," as if she would like to faint. I then asked her if she had ever seen an electric tramway (for it was in the early days of that kind of working). She said she had. "Where ?" I asked, and she said, catching her breath, "Oh—abroad."

I suggested at Budapest, which was at that time one of the few places where tramways were worked by means of electrical energy.

"No," she said, still quivering like an aspen-leaf. "No, at Leeds."

"Well," I said, "are you aware that at Leeds the tramways are worked by steam ?"

"Oh," she said, with quivering lip, "I don't know the difference."

After that I let her go, and another lady, a Miss Smith, who was Lady Mary's companion and a woman of a very different stamp, was put in the chair. She was a virile woman and had a firm upper lip, and when she sat down she looked at me with glaring and resentful eyes. But just at

that instant I was relieved of her defying stare, for she had dropped the umbrella which she had laid over her silk knees and stooped to recover it. She picked it up and laid it threateningly across her knees again. Now, however, she had to attend to the counsel who was putting some questions to her. But during her examination-in-chief she twice dropped that truant umbrella, and twice recovered it with a challenging look at me. I felt that *she* was not going to stand any nonsense, as poor Lady Mary had done. She said nothing very important in her examination-in-chief, but at the end of it she clutched the slithering umbrella and turned to me. She was ready for me! I rose and said, "Madam, I will not cross-examine you, you have an umbrella"; and I sat down. I was sorry to disappoint the belligerent lady, but I am certain that she never was sorrier for anything in her life than for the loss of the opportunity to put me in my right place.

Such incidents are among the lighter reminiscences of my forty years at the Parliamentary Bar, but just as they helped at the time to lighten the drudgery of the day, so they may be of use to relieve the tediousness of some of these more important recollections.

CHAPTER III

COMPANIES AND CORPORATIONS

Private Enterprise and State and Municipal Management—Parliamentary Concessions Originally not Limited in Time—Optional Purchase of Railways—Act of 1844—Purchase of Tramways by Local Authorities—Tramways Worked by Them—Electric Lighting Acts, 1882 and 1888—Gas and Water Companies—A Compulsory Purchase, 1876—Stockton and Middlesbro' Corporations Bill—The Contest as to the Purity of the Water—Dr. Meymott Tidy and Sir Edward Frankland—Purchase of the London Water Companies—Cases where Application Failed: Eastbourne, Folkestone—Mr. Merryweather as an Advocate and Joker—Some Stale Stories—What has been Done by Private Enterprise or Merchant Adventurers—Restrictive Clauses put on Companies—The Sterilisation Clause—Put on the London Dock Company—Effect of—A Limited Dividend—Conversion of Borrowed Money into Shares—Shares now Sold by Auction—Premiums go to Capital—Policy of American Railway Companies as to the Raising of Capital.

THERE has been a tendency in our times, notwithstanding the protests of Herbert Spencer, to trust less and less to private enterprise and more and more to State and municipal action. In the old days the functions of the central or local governing bodies were very limited. Their action was intended to secure to every man the freedom to do as he liked, so long as his action did not prevent the enjoyment of a like freedom to his neighbours. Of course, besides the defence of the country—a duty which it seems to have been the policy of governments to neglect—it was an obvious duty on the part of Government to prevent crime, to protect life and property from fraud or violence, and to get, as Burke had it, "twelve

men into a jury-box." There were, however, a large number of semi-public functions, like the scavenging of towns, the supply of water, the manufacture and sale of illuminants, the carriage of goods and passengers, which were entrusted to private hands, and these duties were not only performed, under the sanction of Parliament, but under certain regulations and restrictions which were intended to protect the public. But concessions to persons or companies were not in the early days limited in time. A railway or a gas or a water company got its Act of Parliament, and under it was to be allowed to carry on its undertaking in perpetuity. It is true, of course, that the power which had created the company could destroy it, and in the case of railways the Lords Commissioners of Her Majesty's Treasury were given an option in 1844 of purchasing railways at any time after twenty-one years upon payment of a sum equal to twenty-five years' purchase of the company's annual divisible profits estimated on an average of the three next preceding years. But although that Act has been on the Statute Book for seventy years, nothing has been done under it, and although the nationalising of railways has been a plank in a good many political platforms, it has up to the present proved rather a rotten plank.

But in the Act in question we have the earliest indication of a policy that such undertakings might under certain circumstances be expediently in the hands of the State instead of in the hands of private adventurers. But much has happened since 1844. The Tramway Act of 1870 provided that any undertaking under that Act which had been constructed and worked by a company or person, might, at the option of the local authority of any and every district through which the tramway ran, be purchased at the end of twenty-one years; and if the local authority failed at that time to exercise its option, it was to have a similar opportunity at the end of every subsequent seven years, and the purchase was to be on the terms of paying "the then value (exclusive of any allowance for past or future profits of the

undertaking, or any compensation for compulsory sale, or other consideration whatsoever) of the tramways, and all lands, buildings, etc., used by them for the purposes of their undertaking within the district."

Under that section by far the largest number of private tramway companies have passed away, and their undertakings have got into the hands of local authorities. These are now authorised not only to own tramways—which at first they were not to work if they could find a lessee—but are now allowed to work them as carriers of passengers and parcels.

A similar clause was in the Electric Lighting Act, 1882, but as Parliament found that the public would not find the money for electric lighting undertakings under such restrictions, it had to climb down, and by the Act of 1888 extended the safe concessions to the promoters for a period of forty-two years, with a recurring option of purchase to the local authorities every ten years thereafter.

Gas and water companies, however, as I said, enjoyed a perpetual concession, except that under the Public Health Act, 1875, a local authority was allowed to compete with a Statutory Water Company, for instance, if the company was unable or unwilling to give a proper and sufficient supply. These enactments indicate a new tendency in legislation, and a good many private Bills have gone in the same direction. A number of companies have been made to part with their water or gas undertakings by what are called "Compulsory Purchase Bills." Probably the first of these was promoted in 1876 by the Corporations of Stockton and Middlesbro'. The water to these towns, supplied by a statutory company, was taken from the river Tees at a place called Tees Cottage, above the town of Darlington. The company was limited by its Act to the extraction of not more than 60,000,000 gallons a week. In 1875 the demands for water in the district of supply had enormously increased. The growth of Middlesbro' had been phenomenal. Where there had, in 1850, been a solitary farmhouse there was now a large and populous town. There



SAMUEL POPE, ESQ., K.C.



were, too, great blast-furnaces in the wilderness which were pillars of cloud by day and of fire by night. Under these circumstances the Water Company in 1875 promoted a Bill to enable it to draw an unlimited quantity of water from the river Tees. The Bill was opposed by the two Corporations, who alleged that the Tees at Tees Cottage was not a proper source of supply owing to the fact that the sewage of Barnard Castle and other places found its way into the stream above the point of intake. There was much and learned dispute as to whether the water was fit for human consumption, Dr. Meymott Tidy, who was a consistent advocate of a supply of river water to towns, saying that the sewage of Barnard Castle and the other places had been got rid of by oxidation long before the water into which it had been thrown reached the point of the Water Company's abstraction; Sir Edward Frankland, on the other hand, saying that there was no river in England long enough to get rid of the germs of a specific disease like typhoid fever. But apart from the scientific question which was raised again and again in Committees—in the case of the Wakefield Water Company Bill, 1876, in the case of Cheltenham, when it proposed to take its water from the Severn at Tewkesbury, in the case of Durham, when it proposed to utilise the Wear, and others—there were naturally sentimental objections to drinking water that had been polluted with sewage, objections, however, which do not seem to have much weight with the water-drinkers of London, who consume Thames water taken from a river which has in its watershed a population of about a million people and over 800,000 animals.

Still, the Committee of Parliament listened to the Corporations of Stockton and Middlesbro' and threw out the Company's Bill on the pledge given by Sir Hugh Bell—at that time mayor of Middlesbro', and then and always a most clear and capable witness—that if the Company would come to Parliament in the next session for a Bill to authorise a new source of supply which was above suspicion the Corporations would support the Bill, but that, if they did

not, then the Corporations would promote a Bill for the compulsory purchase of the Company's undertaking and also for a new water scheme. The Company had for their engineer at the time Mr. Thomas Hawksley, a man of great ability, but also a man of "stirt and strife," and under his advice in the following session, instead of coming for a new source of supply, the Company promoted a Bill, which, if it had passed, would have allowed them to draw an additional 30,000,000 gallons of water from the river at Tees Cottage. Indeed, it was practically the same Bill that had been rejected in 1875, except that the proposal was to take an unlimited quantity in that year, while in 1876 the Company limited its demand to the extra 30,000,000 gallons a week. Under these circumstances the Corporations promoted their Bill for the compulsory purchase of the Company's undertaking and also to authorise the construction of large impounding reservoirs on the rivers Lune and Balder which were moorland tributaries of the river Tees. The fight over these rival schemes was long and strenuous, but in the end the Corporation Bill passed and the Company's Bill was rejected. The terms of purchase were settled by the Act. They were to be the purchase of the maximum statutory dividend at eighteen years purchase, and in addition a sum was to be paid to the Company for "prospective value and compulsory purchase," and that sum was ultimately determined by arbitration to be a sum of over £200,000. Some of the new works on the upper reaches of the river have been carried out as designed by Mr. Mansergh, but up to the present time the Corporations are still drawing water for supply from Tees Cottage, water which was chemically condemned—and so far as I know there has been no catastrophic attack of enteric or other water-borne disease in the crowded but very healthy district of supply. That was the first time, so far as I know, that a company with an unlimited time concession was forced by Parliament to part with its undertaking in the so-called interests of the public; but there have been many instances since 1876 in which Parliament has pursued a similar

policy, notably in early days in the case of Sheffield and later in the case of the eight companies which were supplying the metropolis. A similar policy has also been pursued by Parliament in the case of a considerable number of gas companies, but the result of such applications on the part of corporations has not invariably been in favour of the corporations which coveted their neighbours' goods. Indeed, there has been a meanness in the conduct of corporations in this connection which is worthy of Little Pedlington. They have allowed the nuts of profit to be got out of the fire of speculation by private enterprise. They have not themselves in the first instance become the caterers for the public, but when the companies having taken the risks have made an undertaking profitable, the corporations have shown a laudable anxiety to relieve them of their affluent duties, and also of the future profits of the enterprise to which the shareholders had naturally been looking. Perhaps they are not to blame. The corporation of a town has no right to speculate with the rates of to-day for the purpose of future profits ; and that, if it is true, indicates one of the weaknesses of municipal trading. Corporations can only be fair-weather traders, but the real adventurer must take risks as well as successes into his calculations. Some corporations have chosen what they regarded as opportune times to turn the screw of compulsion on the companies. Thus when the Eastbourne Water Company by inadvertence drew salt water into one of its wells and went for a Bill to obtain water from another source, the Filching Glen, the Corporation tried to compel them to sell their discredited undertaking, hoping, no doubt, to get the damaged article cheap ; but Parliament in that case rejected the Compulsory Purchase Bill. So, too, at Folkestone, when the Water Company was, to use their phrase, " putting their house in order," the Corporation having a case of past default in some minor matters, defective pressure and the like, against the Company, promoted a Bill for the purpose of expropriating the Company and transferring their undertaking to corporate hands. That

Bill, too, failed to receive the approval of Parliament. I remember one of the witnesses in favour of the Company was a shrewd gentleman who was at that time manager of the Pavilion at Folkestone. My learned friend Mr. Worsley Taylor was at the time at the Bar and acting for the Corporation. In his speech for the promoters he sought to belittle the evidence given by the Company's witnesses, and when he came to refer to the evidence of the manager of the Pavilion he said, "And then we had Mr. —, pavilioned in splendour." But counsel on the other side suggested, in interruption, that he had forgotten the rest of the line, "And girded with praise." Such light words help the weary feet of dull days.

Merryweather was before my time, but I found that he had left among his colleagues at the Bar a reputation as a good joker and a bad advocate. It was said of Hope Scott, a man with quite a curious charm—"the most winning man" Gladstone ever knew—who was a Catholic, that he was apt to neglect any other cases if he held a brief in a case which in any way affected the interests of "the Church," which may be counted to him for righteousness, but is rather like a corn on the conscience where sensation has become superacute by reason of pressure. But I gather that Mr. Merryweather was inclined to sacrifice his arguments to his jokes. There were many stories told about him in my early days, and as that is so long ago perhaps they are forgotten, and that must be my excuse if I repeat some of them. It was said of Mr. Justice Wightman that upon one occasion he interrupted the prosy argument of a long-winded and boring leader of the Bar by saying in a whining voice, "Mr. B——, you said that before." "Did I, my lord?" said the advocate, who, like Tennyson's "brook," went "on for ever," but only dribbled then. "Did I, my lord? I had forgotten." "I don't wonder," said the learned Judge; "it was a long time ago."

So these stories about Merryweather may have passed out of the view of most memories. It was said that on one occasion a stranger addressing him said,

"Mr. Smith, I believe."

"If," said Merryweather, "you believe that you will believe anything."

He was driven by a cabman who knew him from Westminster to the Temple, and Merryweather gave him the perhaps correct but skimpy shilling. The cabman, holding the shilling in his reproaching palm, said,

"It's a long shilling, Mr. Merryweather."

Mr. Merryweather looked at the coin and said, "It's as broad as it's long."

Once, travelling in the same railway carriage with Lord Campbell, the Lord Chancellor said to him, and it was true, "Merryweather, you are getting as fat as a porpoise," and Merryweather on a short breath answered, "I will be the better company for the great seal."

On one occasion someone sneezed close to the learned gentleman, and a colleague, with the intention of a joke, said,

"Rough weather, Merryweather."

"Yes," answered Merryweather, "and off Spit head," which was the name, too, that Turner had given to one of his best known sea-pieces.

There used always to be some uncertainty as to whether the House of Commons and its Committees would sit upon the Derby day. Indeed, there used to be an animated debate in the Commons on the motion for adjournment in which one noble lord greatly and amusingly distinguished himself. Merryweather on one of these great occasions asked the chairman of a Committee he was before whether the Committee intended to sit on the next day, Derby day. The Chairman said,

"What, are you going to Epsom, Mr. Merryweather?"

"No, my lord," said the advocate, getting in his midnight-oil joke; "I will be in a Grand *locus standi* case to-morrow. It is a question of running powers."

But perhaps that is too technical a joke to be understood by the common people.

Once when he was addressing a Committee from the long table upon which the counsel or their clerks lay their red

bags, containing the "papers" which some of them have read, Sir Edmund Beckett's clerk—Beckett was then Mr. Edmund Beckett Denison—touched Mr. Merryweather and pointed to Mr. Denison's bag, which lay before him and had his initials, "E. B. D." on it, with the view of getting Merryweather to pass it to him. He not only pointed but indicated the bag by saying, "E. B. D.," but Merryweather turned to him—he could not lose his chance—and said, "U. (you) B. D."

Only one word more as to him. He was coming up by the Great Western Railway to town and had been bored by the intrusive conversation of a curate who was timid but communicative. When they came near Ealing the curate said, "How nice Hanwell looks from the train."

Merryweather put on his fiercest look and said, "You have no idea how nice the train looks from Hanwell." That ended the conversation.

But before this frivolous digression I was speaking of an important matter—the alteration of the attitude of the public toward "private enterprise." Private enterprises in the past, and especially in the Victorian era, were Titans, and piled mountains upon mountains of great undertakings with the view of reaching the heaven of the capitalist. It is to private enterprise—"merchant adventurers" they were called in the old days of the Dutch river and Vermuyden—that we owe all our railways, our waterworks, our gas-works and those other great undertakings which have been of immense public benefit. But more recently there has been a tendency to aggregate these public functions in the hands of local authorities. It is true, as I said, that municipalities were not the pioneers in any of these directions, and waited until private individuals or companies had made their enterprise financially successful before they came to regard it as a public duty to undertake the work that had been successfully inaugurated by the company. In many cases, however, municipalities began to pave the way to the acquisition of such undertakings by seizing every opportunity of putting restrictive clauses upon companies when

they came to Parliament for money or other Bills. The old trick of crippling the horse that you mean to purchase has been successfully carried on in these high quarters at Westminster. Thus, before the Water Companies of London were purchased under an Act of Parliament many of them had what were called sterilisation clauses put upon them. By these it was provided that if and when the undertaking came to be purchased by some local authority or body constituted by Parliament for the purpose, the money which was to be raised and expended under the particular Bill in which the clause was inserted should not be considered as enhancing the value of the undertaking—a section which, it will be seen, changed the company from a trader into a bare trustee in relation to the necessary works which Parliament had seen fit to sanction and the money which was to be spent on them.

In the same way the London Docks Company came to Parliament to improve the dock undertaking in the interests of the public. Complaint had been made that the dock accommodation of London was inadequate, and that while vessels were increasing in size the dock entrances were still shallow and contracted. Antwerp, we were told, was going ahead ; London was standing still. The Company came to Parliament to improve that state of things, proved the necessity of the works, had them sanctioned, but again under the Sterilisation Clause. The result was that the particular works never were carried out, and that after the docks were purchased by the London Port Authority the new body had to embark upon schemes of improvement which will cost millions of money. It did not occur to Parliament when it “sterilised” capital in its anxiety to get all public works into public hands that such a clause was really putting an end to private enterprise. Companies were given powers and were the servants of the public *for gain*. That was why the public invested money in such undertakings ; but here was a clause which insisted that the Company should carry on a great part of its undertaking, not for gain but for the public benefit, like Spenser’s angels,

“all for love and nothing for reward.” And no doubt if you could get a company composed entirely of angels who “had their bowers left” you might succeed in such philanthropic escapades ; but in a company which consists of human beings you might calculate on the existence of human nature. But perhaps that is too much to expect from a legislature.

But there are other illustrations of the same tendency. The fundamental idea of allowing individuals or companies to cater for the public wants under concessions granted by Parliament was that the people who found the money should be remunerated by the public who benefited by the enterprise. Companies were in the old days limited in the interests of the public to a dividend of 10 per cent., and of course as the value of money went down the return upon capital so invested was diminished, so that a company which had been allowed 10 per cent. on its original capital was restricted in subsequent issues to 7 per cent. or even to 5 per cent. There was nothing flagrantly unfair in that. But of course it was left to the company to secure its dividend by every method of legitimate trading, and one of these was by borrowing money on debentures upon the security of the works which had been constructed by means of the shareholders' money. Thus, suppose an undertaking cost £100,000 and the revenue would enable it to pay 6 per cent. on that amount of money. If instead of raising the whole £100,000 in shares they raised £75,000 by that means, and borrowed £25,000 at 4 per cent., then the company could—out of the revenue after paying the interest on the borrowed money (£1,000)—pay a dividend of $6\frac{3}{4}$ per cent. to its shareholders. Again there was nothing wrong about that. It is obvious that if the company I have been instancing had increased its revenue so that it could pay the whole 10 per cent. on the £100,000 capital there would have been no benefit to the shareholders to be got by borrowing money. But Parliament having in view the interests of its clients, the public, has now not only allowed the borrowing of money but has made it obligatory ; although the idea of the legislature in the first instance was that the undertaking should be carried

out by the shareholders' money and not by borrowed money. Indeed, it had inserted in the Company's Clauses Act, 1845, a section which made it lawful for the company to raise the additional capital authorised to be borrowed or any part of it by creating new shares of the company instead of borrowing the same, or having borrowed the same to continue at interest only part thereof and to raise part thereof by creating new shares. But that privilege has in recent times been taken away from companies and they are now prohibited from converting borrowed money into shares; and every such company is, as I have said, compelled to raise a portion of its capital by "borrowing the same."

Another device has been introduced into private Bills for the benefit of the public and to the detriment of those who had embarked in a private enterprise. When a company's undertaking has been successful and it is dividing a large dividend it is highly probable that its shares will be at a premium on the market; and if it has to carry out new works, for undertakings are like vegetables and grow, it becomes necessary to raise more capital which, if the company's prospects are good, would also go to a premium on the market. It used to be the custom of companies to allot the new capital to the existing shareholders, which enabled them to realise the handsome profit of the premium. There was a good deal to be said in favour of the practice. It was the shareholders' enterprise and money which had produced the value which was represented by the premium, and it did seem therefore that the premium belonged to them. This seems to be the view still of some of the American Railroad Companies, for within the last few years the Pennsylvania Railroad Company allotted new capital to the existing shareholders at par and allowed them, if they chose, to realise the premium by selling the shares so allotted. But in this country, as the whole tendency has, as I have said, been against private enterprise and in favour of municipal trading, that sort of thing is not tolerated.

To take away the premiums on the new shares of

prosperous companies the legislature invented what are called "the Auction Clauses." Under these the new capital of such a company has to be sold by auction and the premiums realised by the sale become part of the capital of the company but bears no dividend; and by this device it is obvious that capital is raised more cheaply than it would otherwise be, and that is said to be in the interests of the public. One thing, however, is forgotten or lost sight of in such an argument. It is in the public interest that there should be what I have mentioned as merchant adventurers who will find the money for adventures which are to some extent speculative and experimental; but if it is understood by these persons who are asked to "adventure" their money in such new enterprises that they are not to be allowed to reap the legitimate profits of their undertaking; if they see a legislature on the prowl to check their enterprise and cut down their gains at every turn; if they are to be made to manage their works as if they were public trustees, they will, I am convinced, button up their pockets and the future will have to "whistle" for pioneers.

These Auction Clauses are now under a standing order of the House introduced into all gas Bills, and although at one time there were conflicting decisions as to water Bills—as I gather from a speech of Sir Edmund Beckett in a Nottingham Bill of 1878, for he said, "In 1854 the Nottingham Company adopted, I don't know under what circumstances, the Auction Clauses. In 1874 they desired to raise more money, and the corporation endeavoured in both Houses to have the clauses applied to that capital, and did not succeed: not only did the Corporation of Nottingham fail, but the Corporation of Sunderland failed a few years ago, the Corporation of Liverpool failed, and the Corporation of Chesterfield also failed"—but although in most of these cases the companies have ceased to exist, and their undertakings are in the hands of corporations, it would, I believe, be impossible for the few Water Companies that are left in England to increase their capital now without having these clauses put upon them. But so far has this process

of vesting such undertakings in public hands gone and in handing over all our affairs to officialdom, that so far as I know there is not a single Water Company left in Scotland. In that direction private enterprise has been blotted out.

CHAPTER IV

SOME OF MY LEADERS

The Right to Criticise—Giants in Those Old Days—Sir Edmund Beckett, "Lawyer, Mechanician, and Controversialist"—Leader of the Parliamentary Bar—His Many Literary Adventures—Mostly Bitter—His Country House—The Architect—Clocks—Damages for Libel—What he did at St. Albans and Lincoln's Inn—His Great Gifts in Connection with St. Albans, and Great Fortune—His Confidence—Mr. Hawksley's Allusion to His Knowledge of Clocks and Wills—George Stovin Venables, Q.C., a Great Leader—Hope Scott's Charm—Venables Broke Thackeray's Nose—Not a Brilliant Advocate—The *Saturday Review* and *Times* Summary—Fitz James Stephen and Venables—A Compliment From—Granville Somerset, Q.C.—Samuel Pope, Q.C., "Jumbo"—Pope and Murphay in an Election Petition Case—The Regent's Canal Railway Bill—Was Secretary to the "Alliance"—The Value of Moderation—Dinner at the Savoy—Pope and Gold Mines—Mr. John Clerk, K.C.—Sir Ralph Littler, Chairman of County Council and Quarter Sessions—Colney Hatch Gas Company—Incident in a Glasgow Bill—E. H. Pember, K.C.—Energy and Industry—As a Cross-Examiner—His *Horace* and Other Books of Poems—Some Anecdotes about George Parker Bidder, Q.C.—His Father "Visualizing Figures"—The Calculating Phenomenon—A Successful Engineer—Bidder at the Bar—A Story about how he Came by his Death—The "Mystery" made Large Sums but Lived and Died Poor.

THERE was, if I remember aright, a meeting of the Bar held in Lincoln's Inn to whitewash Sir Richard Webster from some smudge which some people thought was on him, for having as Attorney General taken a brief for the *Times* in the Parnell Commission Inquiry. At that meeting Sam Pope spoke and said, "As an old

member of the Northern Circuit I should be very reluctant to relinquish the right of the junior to criticise the performances of his leader." And that is my justification for these notes upon some of my leaders at the Bar. Speaking to an interviewer not long ago, I said, referring to the days, in 1874, when I had my first Parliamentary brief, "There were giants in those days. Two of the giants with whom I was associated in my first venture in what was then called the 'golden gallery,' but is at present Starvation Court, were Sir Edmund Beckett (afterwards Lord Grimthorpe) and George Stovin Venables."

I will say a word or two about each.

Sir Edmund Beckett was an Alpine peak amongst all the eminences which jutted from the foot-hills of the Bar in my day, but he was an Alp which resembled Hecla, for although he had a clear, cool head he had a burning heart, and was continually in eruption of lava and scoriæ. He was indeed described after his death as "a lawyer, a mechanician and a controversialist," and he in his long and active life—for he was born in 1816 and died in 1905—seemed to have acted on the advice given by one Irishman to another who was about to visit a Donnybrook fair, "Whenever you see a head, hit it."

That was his method at the Bar, and his method in life, in his profession as a "controversialist."

He was leader of the Parliamentary Bar when I went to it, but he had made a reputation in all sorts of odd quarters by means of his pen; and when he wrote the ink he used was made of gall. I admit that with many of his works I am unfamiliar, and so are most people in these days, but his enormous versatility will be judged of even by the titles of some of his strenuous polemics: *Six Letters on Dr. Todd's Discourses on the Prophecies relating to the Apocalypse*; four pamphlets on the Marriage with Deceased Wife's Sister; *A Rudimentary Treatise on Clocks and Watch-making*; *Astronomy without Mathematics*; *Lectures on Gothic Architecture*. These are some of them. He was a Church disciplinarian; objected to the Revised Version; saw Rome

behind ritualism ; and became President of the Protestant Churchman's Alliance. He carried spite into all his controversies and rushed into print with pen in rest, without the least provocation. He had a house in Queen Anne Street, and to show how we worked in those days I may say I have been there at consultation more than once between nine and ten at night. But he had also a house at Batchwood, near St. Albans, a house he himself designed, and he boasted it had been designed by "the only architect with whom I never quarrelled." It is true he had his tiffs with many. He contributed over £100,000 to the restoration of St. Alban's Cathedral, and interfered at every turn with Scott, who was the architect. Scott, indeed, wrote of him in 1877, "The leader among those who wish me to do what I ought not to do is Sir Edmund Beckett."

But it was not only with architects that he quarrelled. He designed the great clock for the 1851 Exhibition, the clock in the tower at Westminster, and "Big Ben," and had fierce controversies with the Office of Works and with Sir Charles Barry. He was the defendant in a libel action in 1859 and made to pay £200 in damages. Whatever his hand found to do he did it with all his might and often botched the performance. Much of his work at St. Albans was poor. At Lincoln's Inn, of which he was a Bencher and Treasurer in 1876, his influence is still apparent in the injudicious restoration of the chapel, but his contemplated demolition of Sir Thomas Lovel's gatehouse in Chancery Lane was happily frustrated. His personal estate was valued at £1,562,500, and he left a will which was so complicated that it was the subject of much litigation. So that he who had lived in strife left a heritage of controversy behind him. When I knew him he was at the height of his professional reputation and also of the somewhat sinister repute he had made by his cavilling pen. He never seemed to have a doubt upon any subject, and one might have said to him, as was said to another cocksure person, "I wish I was only as certain of one thing as you are of everything." He was above middle height, stern-looking, slightly aquiline,

and wore, when not in robes, an old-fashioned coat with a stuck-up, ecclesiastical-looking collar. He was and always had been self-assertive, and that is a useful but unamiable quality. But he deserved his success, for although he was hard and stern he was as quick as a needle, could cross-examine some timid people into fits, and not only carried it with a high hand over witnesses but sometimes bullied even the Committees. I never was with a leader who could take and use a good point from a prompting junior better. While other leaders like Venables or Pope were put out by a suggestion, however apposite, nothing put Sir Edmund Beckett out.

In the days when he was most interested in clocks he had been a friend of Mr. Dent, and indiscreetly assisted at the preparation of that gentleman's will, and was, I believe, a beneficiary under it. It was after Mr. Dent's death disputed and set aside. It was that incident which was referred to by Mr. Thomas Hawksley, the distinguished engineer, when he was being cross-examined by Sir Edmund Beckett and was asked, with a sneer at his omniscience, which was, I admit, pronounced,

"Is there anything you don't know about, Mr. Hawksley?"

"Yes," he said out of one side of his mouth, in his high squeak of a voice; "yes, Sir Edmund Beckett, I don't know anything about clocks or wills."

But Mr. Hawksley did have a large and varied knowledge, and once, when being examined by quite a young counsel—it was only his second or third case—Mr. Hawksley had some questions put to him by the hot youth as to the law, and said in his harsh treble,

"Oh, I know all about the law."

"Yes," said the young man, who thought he would not be behind the witness in his claim to universal knowledge; "yes, Mr. Hawksley, but I know all about engineering." And the audacious assertion took Mr. Hawksley's breath away.

The somewhat bitter retort to Sir Edmund Beckett which I referred to was matched by a word of Merry-

weather's when he was cross-examining the engineer. Mr. Hawksley's face, a clever little face with a clear brow, was drawn to one side, whether from an accident or as a congenital deformity I do not know. While he was being cross-examined by Mr. Merryweather he dropped some words which did not reach counsel.

"What was that you said, Mr. Hawksley?" he asked.

"It was not intended for you, Mr. Merryweather," said the witness.

"No," said Merryweather, "I could see it was said aside."

But that was cruel.

Beckett had a very manly intellect, strong common sense, and a shrewd tongue, and although he was a bitter enemy to many he was a strong friend to some, generous with his big purse and full of kindness to the needy. I had "scraps" with him, but I would rather forget than remember them.

It was of Achilles that Horace said he was

"Impiger, iracundus, inexorabilis, acer,"

a line which has been excellently translated into Scotch by Allan Ramsay,

"A fiery ettercap, a fractious chiel,
As het as ginger and as steve as steel."

I think that describes Sir Edmund Beckett.

George Stovin Venables was one of the great leaders at the Parliamentary Bar in those days, and when Sir Edmund Beckett was on one side Venables was usually on the other. Hope Scott, who was, as I said, described by Gladstone as the "most winning person he ever knew," had passed away in 1873, but Venables, who had indubitable charm, was still in large practice and led me in the first case I ever had in the Lobbies. He was educated at Charterhouse, where he broke Thackeray's nose, and Cambridge, where he won the Chancellor's Medal for English Verse in 1831. He was called to the Bar in 1836 and became a Queen's Counsel in 1863. He was in every respect unlike Beckett. He was not a

brilliant advocate by any means, and stood with his big person and handsome face—his handsome nose had not been injured in his fight with Thackeray—and his arms hanging down by his ample sides, and made his well-remembered speeches like a boy saying reluctant lessons in a sing-song voice. I say "well-remembered," for, unlike Beckett and Pember, who had many notes, Venables trusted to his memory, which was quite a remarkable one. He had done and was still doing a good deal of that fame-unrequited work, anonymous journalism. He was an original contributor to the *Saturday Review*, which began its virulent career in 1855, and wrote its first leading article. He continued to contribute articles almost every week until his death. He also, for a great number of years, wrote the Summary of Events which took the place of the leading articles in the *Times* of the first day of each year. Here he had only to transcribe from his capacious memory. Venables was a lovable man, and it is said, I believe with truth, that George Warrington in *Pendennis* was intended to be a portrait of Venables. FitzJames Stephen—a ponderous man with a big, lowering brow, "oppressive with its mind," as Browning has it—when a window was put up as a memorial of Venables and his brothers in Llyschanan Church, wrote of Venables a warm eulogy and saluted him as a "sort of spiritual uncle or elder brother." The claim of relationship under such circumstances is interesting; and I believe there is correspondence between Carlyle and Ruskin in existence in which the latter's letters begin with the words, "My dear Papa."

Venables wrote poetry and indeed published a volume of poems jointly with Henry Lushington in 1848, and he contributed or suggested a line to Tennyson for his *Princess*. The fourth book of that poem, which contains some of Tennyson's very best lyrics begins,

" There sinks the nebulous star we call the sun,
If that hypothesis of theirs be sound."

The cautious second line was Venables' contribution, but such exotics in verse are not often happy. The two lines

which Wordsworth suggested and which form part of Coleridge's *Ancient Mariner* have not the felicity of many other lines in that weird work,

"I fear you, ancient mariner,
I fear your skinny hand;
For thou art long and lank and brown
As is the ribbed sea sand."

The two last lines were Wordsworth's.

I remember well walking once with Venables from 7, Great George Street, where we had been in consultation to the House. It was my first case in Parliament, and went on for a fortnight in the Commons and nearly four weeks in the Lords before Lord Aberdare. He said he had been reading the shorthand notes of some of my examinations or cross-examinations of witnesses, and added he "thought they were very well done." After that I walked the rest of the way holding my head an inch or two higher and scarcely feeling the pavement, although perhaps now, when I think over it, I owed it more to his kindness than to the merit of those juvenile performances. He was slow, or rather deliberate, heavy, but always polished. He did not dart like Beckett, but proceeded. Still, he often persuaded in his scholarly way where a glibber advocate would have failed. He had the respect of all and the affection of those who knew him best. He retired from practice in 1882 and died in 1888.

Granville Somerset was one of my leaders in those days, but he never enjoyed a first-rate practice. He was called "Granny" by some; it may have been out of affection or it may have been a sneer pointing to his age and sex. However that may be, there never was a more courteous "granny" in the world. He had a wheezy voice, was never great as an advocate, and had to make up for his defects by his care. The marginal notes upon his petitions were a "sight to see." He used to drive round to consultations in Great George Street and the House on fine mornings in a victoria, although he lived quite near in Queen Anne's Gate, and on his wrists he used to show a long margin of white shirt-cuff.

Pope (Sam Pope), whose portrait appeared in *Vanity Fair* with the word "Jumbo" below it (Jumbo was at that time an elephant which was not only famous for its size but for its intelligence), was a large man both ways. His physical dimensions may be estimated by the fact that on one occasion a friend entered his room while the great man was struggling into his shirt. "What," he said, "are you fooling round for in that 'ere circus tent?" He was certainly cast in a big mould, and the largeness runs in the family, for his distinguished nephews, Sir Ray Lankester, Dr. Owen Lankester, and Mr. Forbes Lankester, K.C., have all large bones and liberal muscles. There is nothing of the "lean and hungry look" of Cassius about them.

Once Pope was in an election petition case, and Patrick Murphay, K.C., also a big man with a fat presence, was opposed to him. It was on that occasion that a flippant junior said it was quite interesting to see Pope and Murphay trying to get round one another.

But Pope was big, as I said, both ways. He had a broad, equitable common sense and never did anything mean or little. He made speeches it was impossible not to listen to, and I believe that if he had remained at the Common Law Bar and on the Northern Circuit, where he was holding his own against Charles Russell, and if he had got into the House instead of being tempted by the "flesh-pots" in the corridor, he would have gone further and fared better. He was wanting in the assiduity which marked several of his contemporaries, but he did remarkably well without the painstaking which is said to be genius, but is a very poor substitute for that inspiration.

I remember he was the leader for the promoters of a Bill which was brought in to sanction the appropriation of the waste lands of the Regent's Canal Company and to make a railway on these which was to reach the centre of business London at the Barbican. It commended itself to many as a scheme which gave the only possible prospect of a new railway into London. He had with him as counsel for the Bill Mr. Bidder, myself, and A. Cripps (now Lord Parmoor).

I remember the brief in my chambers. The clients had accumulated an immense amount of information and the papers delivered, when placed on the floor, were a mountain. Ordinary briefs with their satellite papers are kept together in a system by a piece of red tape, but the Regent's Canal Railway brief was so gigantic that it was held together by means of a thick leather strap with a formidable buckle. Now, "I am of opinion," as we say in a case, that Pope never undid that buckle and never looked into those overwhelming papers. After consultation he asked Cripps and myself to remain behind the crowd which generally attends a consultation on such matters, and when the door was closed asked us to "tell him all about it." We did, for in those days we read our briefs, and he made a few notes and after an hour we left; the next day he opened the case for the Bill in a thorough and exceedingly interesting speech. Indeed, we two juniors had a natural pride in the performance and thought we had never heard Pope better.

He used to measure his oratorical displays—for he was really something of an orator, and his speeches were exhausting—by the number of collars which they reduced to wet rags. A one-collar speech or a two-collar speech—and it sometimes sent more to the laundry, notwithstanding a fan with which he armed himself. And in his moments of triumph he used to speak of getting a great speech, not off his conscience, but off that part of him which was more conspicuous than his conscience—although his conscience was there all the same.

At one time he was honorary secretary to the "Alliance," a kind of teetotal league. But from his practice it would have been difficult to determine its tenets, for, although a moderate drinker, he could put away a whisky-and-soda as a bath sponge will greedily take up a pint of water.

In a Barry Bill one of the directors of the company gave evidence in chief in a bombastic way, and tried to make himself peculiarly offensive to the Taff Vale Railway Company, for which Mr. Pope was appearing. The gentleman had overshot the mark. When Mr. Pope rose to cross-examine he said,

"What has the Taff Vale Railway Company done to you that you should come here and snarl at it?"

The witness took a little time to reply, and Mr. Pope said to the Committee,

"He doesn't know the value of moderation," and sat down.

But Pope knew the value of moderation.

Once, after a hard-fought fight for the Corporation of Glasgow I was with him with Mr. Graham Murray (now Lord Dunedin), and Pope, out of gratitude for our help, which perhaps he exaggerated, asked us to dinner with him in his rooms at the Savoy Hotel. He was hospitable to a fault, and in summer gave great river parties. He had ordered champagne for us, and said with a sigh, as he concealed a large quantity of whisky and soda in which the ice tinkled like the clapper of a bell, "Ah, I wish I could join you two in the champagne, but I mustn't." I think some doctor's order must have been present to his mind when he sighed. But after all, the doctor must have been a good one, for Pope had another liberal whisky-and-soda and then broke all orders and had his champagne just as we had.

I say, therefore, that from knowing him it is not easy to determine the exact creed of the United Kingdom Alliance. He was fond of a "flutter," and was not always successful with his speculations. He once told me that he had lost £20,000 by gold mines, and laying his great heavy hand on my sleeve said, "But, Balfour Browne, if a good thing turned up to-morrow I would go in for it." Modest bridge was better for him. He had to take to a bath-chair in his later days for his journeys from one Committee-room to another, but although his work was done with difficulty he was "game" to the last. He was leader of our Bar when he died, and his death left a great and poignant gap and one none of us could fill.

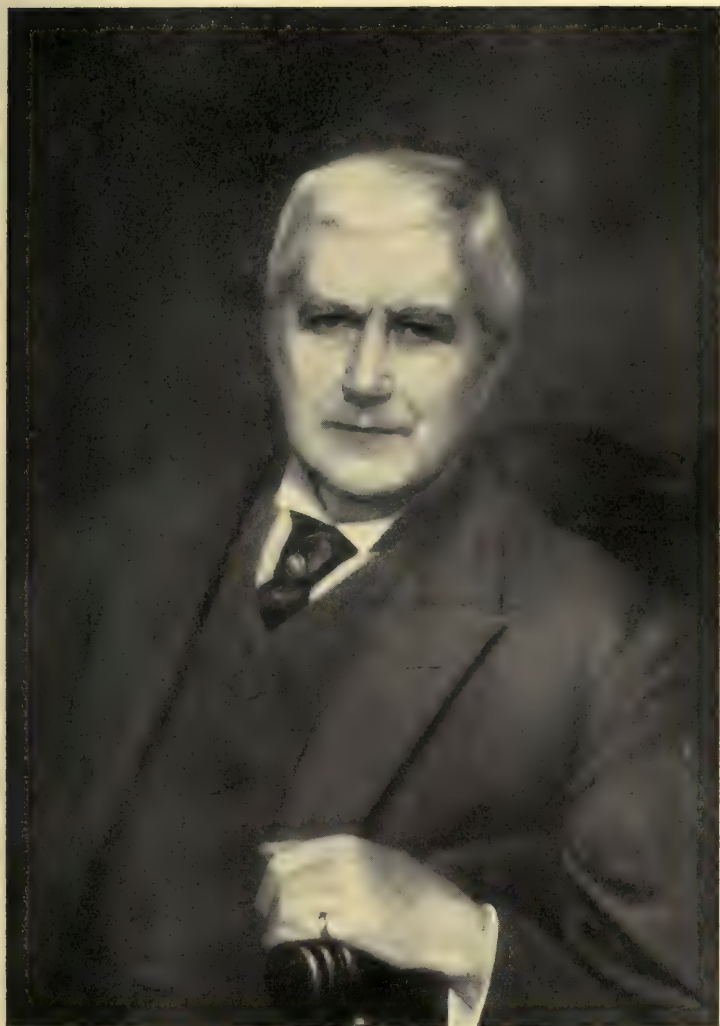
Mr. John Clerk, K.C., was called "South Western Clerk," for he acted for the London and South-Western Railway Company; but he might more appropriately have been called "North British Clerk," for he acted for the

North British Railway Company too, and "hailed" from Penicuik, a parish under the Pentlands, afterwards ministered to by Crockett of "Kail Yard" celebrity.

Clerk was a dry, parched man, both in manner and mind, a man with considerable penury of thought, but within his limits pedantically accurate. At one time he had a very considerable practice at the Bar, but it dwindled and in the end disappeared altogether.

Sir Ralph Littler was leader of our Bar—in name at any rate—after Pope's death, but before that he had seen his best days. He did in his day a large amount of public work, and was Chairman of Quarter Sessions and Chairman of the County Council for Middlesex. He even had some directorial duties to attend to, as I remember from an incident which occurred in Committee. I was appearing for some promoters who were thought by the opponents of the Bill, and perhaps rightly, to be mere speculators who wanted a Bill, as many such persons did, not to carry out the works authorised, but to sell; for, strange as it may seem, an Act of Parliament is a merchantable commodity. With the view of showing that, Sir Ralph Littler had got hold of the Dictionary of Directors, and when my witness was in the chair he went over the names of the promoters and identified them from the book as being directors of a large number of speculative undertakings with shady names. Of course he had the laugh with him when he mentioned the Timbuctoo Co-operative Co. or Aberystwith Aquarium, and the rest. Before I re-examined, I borrowed his dictionary and turned up his own name and asked my witness if he knew that Sir Ralph Littler was a Director of the "Colney Hatch Gas Company."

He was, as I said elsewhere, as thin as a lath, and tall—so much so that it may be said his name, which was a kind of comparative of "little," was a solecism—and in his early days as quick as a ferret. Indeed, he was too lithe as an advocate. Even at the Bar one may be too quick. He was, too, in his later days, a little slovenly in his work, but at one time he had a very large practice and did it with



SIR RALPH LITTLE, K.C., C.P.
From a Portrait

a kind of attorney shrewdness which commended him to many clients. But he got on well with his colleagues at the Bar, who admired some of his qualities. Out of advocacy he was good natured. Pember and Littler were rival practitioners and did not like one another. But they were men of quite different tastes. Pember was literary—a reader, a writer, and a critic. Littler was an active, busy public man, a man of affairs, not of books. But although, as the Scotch say, “there was no love lost between them,” and although I have heard Pember say a harsh word now and then of Littler, Littler, with all his faults—and he had some—did no backbiting, and I never heard him say a word against his rival.

In a Glasgow Bill in which I appeared with Beckett and Pope for the Corporation there was a petition presented against the Bill which, according to our instructions, was “faked,” and to which many of the signatures attached were forgeries. There was a question whether this matter could be raised before the Committee, of which Lord Henry Lennox was chairman, or whether it was a matter to be brought before the referees. Littler argued this point although he had no right to do so, as he was not appearing on the petition in question. Later in the day Venables, who did represent the petitioners, came into the room and took the matter up again, and began his argument with the words,

“It concerns me to tell the truth, more than it does Mr. Littler.”

This was printed on the shorthand notes which were in our hands the next morning without a comma between the “me” and the “to,” as no doubt there should have been. Beckett’s quick eye saw the mistake and called attention to the “serious allegation,” and Vaughan Richards, K.C., who was also in the Bill, said loud enough for everyone to hear, “I agree with Venables.”

Once, in a case where he was opposed to Mr. Bidder, Littler said in reference to one of his opponent’s arguments that “Two blacks do not make a white.”

Bidder's answer was pert but not pertinent. "You may call yourself black if you please," he said, "but I decline to be classed in the same category with you." Afterwards Littler commented to the Committee, not without some ground, on "Mr. Bidder's irregular conduct."

Littler had a considerable practice outside Parliament. In his younger days he was successful on circuit and later he had many briefs in compensation cases and before the Railway Commissioners. He was not a profound lawyer, but he was an adroit advocate.

E. H. Pember was born in 1838. He was educated at Harrow and Christchurch, Oxford, and never let you forget it. He graduated in 1854, was called to the Bar soon afterwards, and made a Queen's Counsel in 1874, the year that Sir William Harcourt retired from the Parliamentary Bar and went into the House of Commons. Pember was pre-eminently a scholar and a gentleman, a strenuous worker, a man who had indefatigable energy and industry. He wrote out many of his speeches, and very often consultations with him, as they were called, consisted of a rehearsal to his admiring juniors of the speech he meant to deliver in Committee. In these notes, so careful were they, that even such sudden phrases as "it occurs to me to say," or "on the spur of the moment" were carefully transcribed. His notes were a magnificent testimonial to his industry. He began by underlining in these some of the most important words or passages, but, I suppose coming to the conclusion that everything he had written was important, he ended by underlining every word. He had an inordinate respect for his own clients and looked with considerable suspicion upon the attorney on the other side. He prepared his speeches so carefully that when he was called on without preparation his efforts were not so happy.

He was not an adroit cross-examiner of witnesses. He sympathised too much with the witnesses called on his own case, and argued too much with those who were called against him. He did not cross-examine a hostile witness nearly so well as Mr. Bidder did, and could not chaff one good-

humouredly as Mr. Pope did. His principal triumphs at the Bar were in the carrying of the Barry Dock and Railway Bill and the Manchester Ship Canal Bill. His speeches in these cases were studied performances of elaborate recollection. He sometimes was irritable, but he forgot pin-pricks in time. Once when I was opposed to him, he made a mistake as to what had taken place in the earlier conduct of the case, and I said,

"If my learned friend had read the shorthand notes he would have known what took place."

A volcano erupted! I had stung him by the imputation that he had not read his notes. It was ten days before he was quite the same again. He was always, however, as I say, a scholar and a gentleman. These qualities indeed are characteristic of his poems. He wrote and published many, both for his own amusement and for the admiration of the select few. They were printed for private circulation, but never would have been popular. He sent a copy of his *Debita Flaco*, in which he had not translated, but had deftly "made down" Horace into a modern English dress, to Mr. Justice R. S. Wright, who wrote back that he had "found more of Horace and less of Pember in the book than he had expected." Some of his work was excellent, as the volumes of 1895, *The Voyage of the Phocæans and Other Poems* of 1897, *Adrastus of Phrygia and Other Poems* of 1899, *The Death of Thamyras and Other Poems* of 1901, *The Finding of Phidippides and Other Poems* testify. He was a good-looking man, and knew it. Indeed, someone said of him that he was born with a "silver spoon and an 'I' in his mouth."

That reminds me of an incident which occurred in Committee. Mr. Pember was speaking and said by inadvertence,

"We all know there are twenty-four letters in the alphabet."

Mr. A. J. Ram, K.C., who was sitting next me, said,

"I wonder which two he has missed out? Certainly not 'I.'"

"No," I said, "probably you (U)."

But he certainly had the best of the laughing argument on one occasion. In the long inquiry before Lord Balfour of Burleigh and Sir Courtenay Boyle, which I have mentioned elsewhere, Pember said what at the time—and jokes must always be taken with their atmosphere—seemed an excellent thing. Before the time of the inquiry the cost of terminal accommodation provided by railway companies at stations was intended to be covered by the maximum rate. It was looked upon as a cost incidental to conveyance. It is true that under certain words in their Acts of Parliament railway companies could charge for duties performed which were incidental to the business or duties of a carrier. But when the companies submitted their proposals to the Board of Trade for a revision of their charging powers they proposed a specific charge for station accommodation and for such terminal services as loading and unloading, covering and the like, in addition to the tonnage charge. For the traders I objected to this, which was an increase of charge, and especially to these terminal charges, and at one stage in the proceedings I said that in the past the traders had been whipped with whips, but now we were to be whipped with scorpions.

"Yes," said Pember, "the sting of the scorpion is generally in the terminal," and I forgave him for rounding on me with such a quick joke. I believe, however, a scorpion does not sting with its tail, but bites with its mouth. However, who has any right to vivisect a joke?

Upon one occasion when he was speaking in a Lords' Committee some indiscreet client behind him interrupted him to set some inaccuracy right. This was too much! He turned upon his client as if he would have rent him, and his annoyance even went the length of some not complimentary expressions.

The chairman, with the view of throwing oil upon the troubled waters, said, "Go on, Mr. Pember." But his interposition was not quite successful. "I can't go on, my lord," said Mr. Pember. "I hate being corrected from

behind." "It reminds him of his youth," said one of the counsel who was engaged on the other side.

Once there was a counsel at the Bar who had had his education in trade and not at a public school or university. That fact of itself irritated Pember. The man in question had a good deal of native ability if he lacked the veneer which such polishing shops put upon deal. Once, in a case in which he was appearing for the petitioners—for notwithstanding his defects he had a considerable practice—he was in opposition to Mr. Pember, who was appearing for the promoters, and he said to the Committee the "gravamen of his client's case was that there was to be no reduction for taking a large quantity." But instead of "gravámen" he did actually say "gravymen," whereupon Mr. Pember said, "there used in his school-days to be a considerable reduction for taking a *false* quantity."

But enough of his school-days. He retired from the Bar when he was seventy, and his colleagues gave him a dinner, at which, if I remember aright, he said that he would rather go when people said of him, "Why is he going?" than stay on till people asked why is he staying. He died in 1911.

George Parker Bidder was an interesting man, but I am not certain that his father was not more interesting than he was. The father, who was born in 1806, was the son of a stonemason on Dartmoor, and as a child he showed the most extraordinary power of mental calculation. He had in a marked degree the faculty of visualising figures, which has been referred to and described by Francis Galton; and he transmitted that power to his son, and he in his turn to his children, although none of them seem to have had that vision of figures in such perfection as the original Bidder, who was exhibited by his father as the "calculating phenomenon," who thought it best to turn an honest penny by his son's unique talent instead of leaving the boy at school. After the wonder of his arithmetic had to some extent worn off he was sent by some friends to a school in Camberwell and afterwards to Edinburgh, where in 1822 he obtained a prize

given by the magistrates of the town (a curious municipal excursion), for the study of the higher mathematics. He was associated in 1834 with Robert Stevenson on the London and Birmingham Railway, and soon after got into work in connection with Bills in Parliament, where I have no doubt this ready-reckoner of a man made a considerable mark. He—and his son, too, for that matter—could work out on the instant in his head calculations which would have taken most men a long time and reams of paper to do. He became a terror to the slower minds whose arithmetic might still depend upon drumming fingers, and it was said that once a counsel who was opposed to him asked that he should not be allowed to remain in the Committee-room on the ground that “nature had endowed him with qualities that did not place his opponents on a fair footing.” Apparently in those old days nothing but the commonplace was native to the Committees of Parliament. This curious faculty of visualising is useful, but it is not by any means a mark of genius. I remember a boy who was only a “half-wit” or imbecile, who resided at Auchterarder in Perthshire, who had the power of spelling any word backwards, and at once,—a power which depended on the same power of seeing the words just as the “calculating boy” saw the figures.

But Bidder the engineer was not only a “calculating boy,” he was a capable engineer, and I think the Victoria Docks in London was one of his chief constructive works. He also designed the first swing bridge, which was erected at Reedham, on the Norwich and Lowestoft Railway. He died in 1878.

His son came to the Bar and had at one time a large practice, both in Parliament and in compensation cases. He was a little, thick-set, commonish-looking man, with whiskers, and bisected spectacles which glared at one. He was a man of ability and cross-examined like a sleuth-hound. He was compacted of stubbornness and was far from conciliatory as an advocate. I was with him often and against him often, and he always commanded my respect,

although he not infrequently produced considerable irritation. His manners were a little brisk. He was not

" Like a gentleman at ease,
With moral breadth of temperament,"

but he deserved his success and was mourned in his sad death.

There is a story told of him in Mr. Alderson Foote's book which is no doubt true. In an arbitration Mr. Bidder was opposed to a counsel who had a useful but strident voice, and Bidder, being irritated, said he had an application to make to the Umpire, which was that his opponent should be asked to modulate his very disagreeable voice.

The opponent, however, said that he also had an application to make, and his application was that Mr. Bidder, who had a disagreeable face, according to him, should be directed to turn his back to the Court and the witness he was examining. There is no record of how these cross-applications were dealt with by the tribunal.

It is not often that in an ordinary professional career at the Bar one comes across tragedy. Of course men that one has known have passed away ; empty places have been left. One has had to mourn many deaths, but these black events have taken place, as it were, behind the scenes ; you have not seen the fifth act of the drama on the stage. But in relation to Bidder's death I was brought into more intimate relations with the sad end of a fighting life. We had a case as to a pillar of coal which was being arbitrated on in Manchester. With the view of enabling promoters of railways to construct their lines at reasonable cost Parliament had in the Railway Clauses Act, 1845, enacted that the Company should not be entitled to any mines of coal, ironstone, slate, or other minerals under any land purchased by them except only such parts thereof as shall be dug and carried away or used in the construction of the works. And it is also provided that if the owner of the minerals wanted to work them he was to give the Company notice, and if it appeared to the Company that the working of such minerals would damage the railway and they were

willing to pay compensation to the owner, then he should not work the minerals. In some cases the company has refused to pay compensation and then the owner of the minerals can go and work his mines ; in one case, at a place called Beaston, a little way south of Leeds, that was what took place. The railway company refused to purchase the supporting pillar. The colliery company worked the coal and let down the railway, and the railway company for a long time had gangs of men day and night making up the railway where it was brought down by the underground working of the colliery company. In most cases the company on notice from the owner pays compensation, and the colliery company leaves what is called a "pillar of coal" to support the railway. It was in a case of this sort, where a pillar had been left and where the amount of compensation had to be determined, that Bidder and myself were in Manchester. He was for the mineral owner and I was for the railway company. The case was being heard in a room at the Assize Courts at Strangeways, Manchester, and had gone on for several days in somewhat dark winter weather in a town not remarkable for the purity of its atmosphere. The way up from the Courts to the Queen's Hotel burrows under a series of railway bridges before it comes to the surface at the open space between the Cathedral and the London and North-Western Railway Station, and as Bidder was making his way through the darkness under these bridges a railway cart or lorry making its way out of the station of the Lancashire and Yorkshire Railway Company struck him and knocked him down. He always wore spectacles and did not hear very well. When I arrived at the Queen's Hotel I was told that Mr. Bidder had met with an accident, and I found him in his sitting-room. The accident must have been a serious one, for he had not only received blows but was bleeding from a wound or wounds. A doctor had been sent for and arrived almost immediately after I got there. I waited until he had examined his patient and saw him when he came out of Bidder's room. He told me that the best thing Mr. Bidder could do was to go home,

but he added, "He is obstinate and won't." A telegram was sent to his London address, and I then went back into his room and was somewhat relieved to find that although he was done up in white bandages of the doctor's winding he was smoking.

I told him that the doctor thought that he had better go home and said I was certain my clients would consent to an adjournment of the arbitration to any time that would suit his convenience. But, as the doctor said, he was obstinate. He would not hear of an adjournment ; all he wanted was that we should arrange to sit the following day in the hotel instead of at the Courts, and he assured me that in the morning he would be quite ready to go on with the case.

I made the arrangements he suggested and, bandaged up as he was, he attended and did his work the next day. I have no doubt that that was almost a fatal mistake. After all, there had to be an adjournment, and the next sitting was at the Surveyors' Institution in London about ten days afterwards. Bidder was there, but looking ill, although—for he never lacked pluck—he declared he was getting all right. I think that it was on that occasion I summed up my case for the Railway Company and that there was nothing left over but his reply. Notwithstanding his courage he was far from well, and the next sitting in the arbitration, and the last, took place in his rooms at Queen Anne's Mansions. I was not there, for I had something else to do and it was not essential that I should hear his speech. But it was the last he made. Within a very short time he died as the result of that injury, and in my view from the "contributory negligence," as lawyers call it, of his want of care of himself. He was a sturdy man of great ability and left a distinct gap in the ranks of the profession.

There was one man at our Bar who was a mystery. He had been successful as a young man at the common law Bar and on circuit, for he had a deft, sinuous brain and a glib tongue, and although sometimes careless of forming complete sentences his speech gurgled on like a garrulous brook.

He was so quick the shorthand writers perspired over their work. From that beginning he got into a large all-round practice. He had work in Parliament on arbitrations and elsewhere. I know that there is a great tendency to exaggerate the incomes that are made at the Bar, but the "Mystery," as I will call him, certainly in a good year did not make less than £15,000, and yet somehow he was a poor man. The latter pitiful, some would call it discreditable, fact was variously explained, as was natural, by his friends and enemies. It was said that early in his career he had entered into some elaborate speculation with a man who had no means. The explanation reminds me of the incident of the unlucky Englishman who, with a small capital, left this played-out country and went to the United States. He entered into partnership with a "cute American," and explained his return to England by saying that he had had the money and his American partner the experience, but at the end of six months he had the experience and his partner the money. I do not know whether that was the explanation of the "Mystery's" misfortunes, but it is a fact that, notwithstanding his great earnings, he had a door that was "hammered by duns." It was even said that he was in a sense a slave, and that he was working and toiling, often perhaps in a slovenly way, for his creditors, and that the respectable man he had for a clerk was not so much a clerk as a "receiver."

It was not to be wondered at that under such circumstances his practice fell off, and that perhaps he was not so careful as he had been—for it is, I believe, a fact that hard work never killed a man, but that anxiety is an attrition which can wear away even an iron will. But although some of his clients deserted him some stuck to him—some of the latter indeed under somewhat humiliating circumstances. In some cases a brief was delivered to him on condition that he would not intervene in the case, but would allow the "silk" who was briefed with him to do the work. In these latter days he was hard up, and although in a recent volume of essays, in one of them entitled "On

being poor " the author says, " There is, too, something to be said for the excitement of being hard up. Men who live from hand to mouth are alive and active, every mouthful is, as it were, a coup. The man whose fortunes are insecure has a to-morrow full of interest, but the man who has no anxiety for that which is to come is deprived of the interest and excitement which comes from hope from the chase of fortune, the sport of conquering circumstances and commanding fate"—such a philosophy would have been but a poor consolation to the "Mystery," for I once had a letter from him in which he said, after telling how he had fallen among thieves, "I want £500 in the next day or two. I don't ask you quite *in forma pauperis* or I would blow my brains out—which I feel quite like doing to-day—but would let you have a security not realisable to-day, please understand," and so on.

It was a sad letter and his was a sad life. He did not blow his brains out—people who write like that never do—but muddled along till a good many years afterwards he died and was buried. There was no will to prove in his case, for there was nothing to leave but debts. But he remains a curious and deplorable mystery even now. When I hear of the immense fortunes that are made at the Bar I remember the "Mystery." *

* There was no mystery about one of my leaders, H. W. Cripps, Q.C., a courteous advocate, a fine specimen of an English gentleman. He retired soon after I got a footing in the Lobbies, and resided at his estate of Parmoor, near Henley, which now belongs to his son. He was a capable, genial man with a face which the air had made ruddy and the sun had bronzed.

CHAPTER V

SOME OF MY LEADERS WHO WERE NOT AT THE PARLIAMEN- TARY BAR

Henry Mathews (Lord Llandaff) in the Barry Railway Bill—Chairman of Royal Commission in London Water Supply—Counsel Employed—Great Length of Inquiry—As a Verdict-Getter—Compared with Sir John Holker—His Impatience—Story of him at the Bar—As Home Secretary—Sir Richard Webster (Lord Alverstone—"Keep it up"—Sir Horace Davey (Lord Davey) in Politics—In Cases with him—Pooh-poohing Juniors—Sir Henry James (Lord James of Hereford)—In the Railway Rates Inquiry—A Weak Backbone—In the Mansion House—Case as to Rates on Foreign Produce.

I WAS once in a small case with Henry Mathews (afterwards Lord Llandaff), and we differed as to the advice we should give our clients, and wrote separate opinions; and although I forget all about the case I am still of opinion that I was right. Once he had an important Parliamentary Brief for the Promoters of the Barry Dock and Railway. The traders in South Wales and the coal owners, especially in the Rhondda Valley, had quarrelled with the Taff Vale Railway Company and with the Marquis of Bute, the owner of the docks at Cardiff. They alleged that the railway was congested with traffic and that the docks were inadequate to the trade which was being done through them. The delays, they said, were damaging to their interests and that it was the duty of the dock authority to provide further accommodation. The Marquis had somewhat indiscreetly declined to make a new dock, and through his counsel, Mr. Bidder, said, "Go and make a dock for yourselves."

Well, they took him at his word and promoted a Railway Bill to authorise the construction of a railway from two junctions with the Taff Vale at Hafod and Treforest down to Barry Island and the construction of a deep-water dock there. It was this Bill that Henry Mathews promoted. The promoters had entered into provisional contracts with the owners of the land at and round Barry Island and promised, instead of paying them a lump sum for the land they were going to acquire for the undertaking, to give them a royalty of a halfpenny per ton on all coal that was to be carried by the railway and shipped at the dock. There were certain other land-owners whose land would be taken for the construction of the line whose mouths watered for such a bargain and they opposed the Bill. Counsel who appeared for them accused the promoters of purchasing the support of certain noblemen and gentlemen by these improvident bargains while they proposed to leave other proprietors to the tender mercies of an arbitration to compensate them for their land; and in a burst of oratory quoted Jean Paul Richter's advice as applicable to these bribing and corrupt promoters, where he says,

"In this ocean of life rise like a living man by vigorous swimming, not like a dead body by corruption."

It is a good saying, twice used by Carlyle in his works—once with an acknowledgment of its origin and in another place without even inverted commas. I remember the contest well and the result, for the Bill that year was rejected. It was promoted in the following session, when I understood Mr. Mathews refused the brief. Mr. Pember led for the promoters, Mr. Jeune was with him, and I was the third counsel to begin with.

In the course of the case I took "silk" and so jumped over Jeune's head for the time. But that was not the only opportunity I had of knowing Henry Mathews, who was then leader of the Oxford Circuit; and the more I knew of him the more I admired his impatient ability. Lord Llandaff was chairman of a Royal Commission on London

Water Supply, which sat from November 22, 1897, until March 23, 1899. In that time there were sixty-four days given to the Inquiry.

I appeared with my learned friend, Mr. Freeman, Q.C., for the London County Council, and Mr. Pope, Q.C., Mr. Claude Baggallay, Q.C., Mr. Littler, Q.C., Mr. Lewis Coward, Mr. Pember, Q.C., Mr. Rickards, and Lord Robert Cecil represented the water companies and others interested in the Inquiry. There had been a Royal Commission presided over by Lord Balfour of Burleigh before on the question of London water, but that Inquiry was conducted without the assistance of counsel and in consequence did not find favour in our eyes.

The Inquiry before Lord Llandaff's commission was long and interesting at the time. There seem to have been 27,934 questions asked and possibly answered in the course of the proceedings, and the speeches of counsel, which fill 670 printed folio pages, were long and possibly eloquent. But the interest in these proceedings is as dead as Queen Anne and these ponderous tomes are its monument. But the interest in a man never dies, and Lord Llandaff was distinctly a man who was very much alive and who naturally demanded admiring attention. He was a man of very great ability, but I have seen many men with much less who made better advocates. Indeed, brilliance in a man is not the best ware to take to the market of a common jury. I feel inclined to offer Kingsley's advice to his daughter, slightly altered, to an aspiring barrister, "Be plain, good sir, and let who will be clever."

But Henry Mathews was too clever by half for an ordinary tribunal. A jury or even a stupid judge—and there are some—is suspicious of the qualities of genius in an advocate, and thinks with the common people that a man with such ability is taking them in; for the common people's idea of a lawyer is that he is intending to deceive and that there is more than meets the eye in the transposition of the letters in the word "lawyers," which in a different order make "slyware"; and it is reported of a learned judge, so much is

Bar eloquence a thing of the past, that he said of a clever counsel, "Sir, he insulted me with a peroration."

As a verdict-getter—and that is the real test for the client—Mathews was not very successful. To persuade a man you must not seem to stoop to his intelligence. It was in this way that great, heavy, clumsy, slow Jack Holker (afterwards Lord Justice Holker) came to be a really successful man. He had the art of never seeming much cleverer than the people he was addressing. Besides, patience is an excellent quality in a counsel, and Henry Mathews was an impatient man. In the long Inquiry I have mentioned he lost his little bit of temper several times, but notably with an engineer of experience, and turning to another member of the Commission, I think it was Mr. John Mellor, Q.C., he said in a voice which all the counsel and also the poor brow-beaten witness heard, "A damned obstinate witness."

But there is an authentic story of him while he was at the Bar. He had a well-disposed but interrupting junior with him in a case. No doubt such a junior, like the miner's wife in George Eliot's *Felix Holt*, of whom her husband said, "Lord a-massy! she thinks she knows better nor me," is an annoyance, but his punishment at the hands of Henry Mathews was perhaps unnecessarily severe.

"Sir," he said, when his argument was over, to his learned friend in the back row, "you have kept me in purgatory. What with you behind and that man in front" (that was the learned judge) "I have led the life of the damned."

Once down on circuit he had as a junior a very careful man who is now a distinguished judge. They met in consultation and Henry Mathews said,

"There is only one point in this case . . ." and he expressed his view.

The junior with becoming diffidence suggested that there was another point. But his leader shook his head peremptorily and said, "No."

"Forgive me," said the client, who had just come into the room, "there is that point in the case."

"Is there?" said Mathews, and he took up the brief and

flung it with its great white fluttering wings over the head of the client, and it fell rustling against the wall. "Well, find it," said the irritated leader.

Perhaps it was that quality which deprived him of the success his ability should have had at the Home Office and led to his being called the "Not-at-home Secretary."

Not very long after the Inquiry into London water he became crippled with rheumatism, and I used to see him at the Athenæum Club hobbling with the assistance of his two sticks—*Le Diable boiteux*. It was sad to see a man with an active brain and an eye which could flash thus laid by the heels. But to some such favour we must all sooner or later come.

Sir Richard Webster (Lord Alverstone) has given his own recollections to the world and made it superfluous my recollecting him. Still, I cannot forget him, and my memories of him are all respectful. He was a man of great assiduity and plausibility, but—may I be forgiven for saying it—not a great man, although he attained great eminence in his profession and sat in the seats of the mighty on the Bench. He worked like a nigger and larded like a cook. He made a point of addressing almost everyone, even casual friends, by their christian names, but I have no doubt it was all done with the intention of being kind.

I was with him in many cases, although he had left the Parliamentary Bar before I went to it. We were together for the greater part of a winter before Lord Bramwell's Commission as to the silting-up of the Thames at Erith. I acted as his junior in several important arbitrations. I found a note from him not long ago which was written at the Courts and sent to me at Westminster, in which he said,

"DEAR BALFOUR,

"Keep it up. I am just finishing Belt & Laws.

"Yours,

"R. E. WEBSTER."

Well, I daresay I did keep it up, but not like Westbury Chancery junior. Once Bethel had to leave a Chancery

Court to go down to the House of Lords, and told his junior to keep it up. The great man when he got down to Westminster forgot all about the case in Lincoln's Inn Old Hall. Indeed, he did not go back into that Court for three days, but when he did go back he found his faithful junior still "keeping it up."

Webster had a large practice before the Railway Commissioners and in most of the cases I was leader on the other side. He had a big head with a cupola of a forehead and flabby face-muscles (his leg-muscles were not flabby, as his feats at Cambridge showed), which hung in dewlaps under his eyes. He had luck and used it to the best advantage. I think on the whole he had a flabby mind, but he was an excellent man and a good fellow.

Horace Davey (Lord Davey) was a wizened little man whose eyes seemed only two of his wrinkles, he "peeped through his eyes" but he was a man with the quickness of a fencer and the penetration of a rapier. He had a superior sort of sniff. He was a man who found the door into the House of Commons the narrow gate. He was not destined to popularity, and even at an election meeting was called by some dissentient "a slimy toad." But he really was too good a man for a rough-and-tumble platform and proved it by his want of success at Dundee, Christchurch, and elsewhere. I only had Sir Horace Davey as my super-leader three times.

There was a Bill promoted for the construction of a railway from Lanarkshire to Ayrshire, and the gentlemen who promoted the Bill had the benefit of the support and assistance of Lord Eglinton, a large landed proprietor in Ayrshire. Lord Camperdown was the chairman of the Committee to which the Bill was referred, and the opponents, one of them being the Glasgow and South-Western Railway Company, suggested that the Bill should not proceed because they said Lord Eglinton had bound himself by agreements with that company which prevented him becoming a promoter or supporter of this rival scheme. Lord Camperdown's committee thought that the question whether that

was so or not was one involving the construction of documents and other legal considerations, and was therefore not so much a matter for them as for another tribunal, and they adjourned the hearing of the Bill for a fortnight to enable the parties to procure such a decision. The question was by agreement referred to an Arbitration Court consisting of Lord Herschell as Umpire, Mr. Asher, Q.C. (of the Scotch Bar), and Mr. James Staats Forbes, the chairman of the London, Chatham and Dover Railway Company as arbitrators. Mr. John Blair Balfour, Q.C. (afterwards Lord Kinross), acted as counsel for the Glasgow and South-Western Railway Company, with Mr. Shiress Will, and Sir Horace Davey was briefed for Lord Eglinton. But he accepted the brief only on condition that he should have the assistance of a junior who could cross-examine the witnesses, for he said he did not cross-examine. As I had been in the Bill I was briefed with Sir Horace. It was a little odd, however, that as Mr. Balfour on the other side himself cross-examined our witnesses, Sir Horace, forgetting his own stipulation, tried his " 'prentice hand " at it and did it so much to his own satisfaction that I had nothing to do but listen and admire. His argument in that case was as clear as ice and as cogent as a steam hammer. We went back to the Committee with " flying colours," and in the end got the Bill through both Houses.

In another case I was with him under somewhat curious circumstances. The British Gas Light Company supplied gas in Hanley, and certain gas consumers in the town had applied to the Recorder to reduce the price of gas so supplied. The British Gas Light Company was somewhat peculiar in its constitution. It is a limited company that carries on gas undertakings in various places, and these undertakings are conducted under separate Acts of Parliament. There were therefore some complicated legal points in the case, and the Company had taken the written opinion of Sir Horace Davey before the hearing of the case before the Recorder of Hanley began, and acted upon that opinion in resisting the deruction in the price of gas. The Recorder, I think to

suit the convenience of counsel, and for that I am grateful, sat to hear the case in London, and the matter was before him for nearly a fortnight. I acted for the Company and told him with all the emphasis of which I was capable—and I daresay some of my learned friends would have called my emphasis by a harsher name—that he could not under the circumstances make an order to reduce the price of gas. But he did order the Company to charge sixpence less for every thousand cubic feet of gas sold. I advised my clients to go for a writ of *certiorari* to quash the order, and they asked me if I would take the brief in the High Court. The case was coming on in the Law Courts when all the Committees at Westminster were in what was called “full swing,” and I explained that it would be impossible for me to argue the case in Court, and advised my clients, as they had consulted Sir Horace Davey, to give him the brief. This was done, and our clients gave me a brief too, although I told them I would not be there; but they asked me to attend the consultation with Sir Horace, as I had been in the matter all through. I went up to his room in the Law Courts one morning early and we were admitted to consultation. Sir Horace blinked at us, and in a few minutes indicated that in his superior opinion we were all wrong and could not succeed. When he had fully committed himself to that view I said,

“I fear, Sir Horace, that you have forgotten that you advised this Company, and,” I added, “we have been acting throughout upon your opinion.”

He blinked again, but this time at our client. “Have you got my opinion?” he asked.

The client said he had not the opinion with him, but he endorsed what I had asserted, that we had been acting all through the proceedings in accordance with his advice.

Sir Horace put his pooh-poohs in his pocket and said, “This case can’t come on to-day. We will have another consultation to-morrow morning, and would you bring my opinion with you?”

We met again the next morning and Sir Horace was exceedingly bland. He said to me,

"I am very sorry, Balfour Browne, that I have a case this morning in the Privy Council which I must attend to. Can you look after this until one o'clock? I will be up by then."

I was not pleased. I explained to him that this was our busiest time at Westminster and that I had asked the clients to brief him because I could not be absent from the Lobbies.

Then with some apologetic matter he asked me as a favour to him to remain until one o'clock. "The case," he said, "won't be on till the afternoon, and I'll relieve you at lunch-time."

I promised, perhaps not with a very good grace, to do that, and he went away to Downing Street and I went into Court. The case, contrary to his prophecy, came on very soon. It was all over before one o'clock; the decision was in our favour and the Recorder's order was set aside.

I was with him in another case. An exceedingly pleasant and able member of our Bar, Mr. Meysey-Thompson, who died young, was the junior, and was responsible for having advised the action. I do not remember whether he was right or wrong, but I remember the scathing contempt with which Sir Horace jumped on us. The consultation was nothing but a defence of Meysey-Thompson, but whether he was acquitted or not after that bad half-hour I am unable to say.

But that case recalls, not pleasantly, a somewhat ungenerous trick of some of the super-leaders. It has been alleged of certain doctors that they have made a long face and a black prognosis in all the cases they are called in to, with the view to a reputation for medical prescience if the worst comes to the worst, or a reputation for extraordinary skill if the patient by reason of his own constitution pulls through. I cannot think that it is the same clandestine policy which actuates the leaders referred to, but some have had the way of taking the gloomiest view of



E. H. PEMBER, ESQ., K.C.

their client's case and of blighting with curt words the timid arguments of any Mr. Phunkey who may be their junior.

I remember a case I had at Quarter Sessions at Taunton as to the rating of machinery in some bobbinet manufactories at Chard. The question was whether certain machinery which was not fixed to the freehold, but was in the factories for the purpose of making them what they were, and was intended to remain there so long as it was a bobbinet factory, were to be taken into account as enhancing the value of the hereditament for rating purposes.

We succeeded in the Court of Quarter Sessions, but the magistrates stated a case for the opinion of a superior Court. I do not remember what took place in the King's Bench or the Court of Appeal, but in the House of Lords my clients very properly took in Sir Richard Webster to lead me. I was unable to be present at consultation, but I heard that Webster said,

"Where is Balfour Browne to support his rotten case?"

Now a thing like that remains in one's memory when more important matters run through its limp fingers. The case came on in the Lords, and again owing to my having a case before the Railway Commissioners I was not there the first thing; but when I could get away I got into a hansom and went down to Westminster.

As I arrived at the door which leads into St. Stephen's Hall, Webster was getting into a hansom.

"What happened?" I asked.

"We weren't called upon," he answered, and drove away, but not before I had time to say,

"So much for my rotten case."

And he drove away with that fly buzzing in his ear.

I think I can say with truth that I have avoided the fault of jumping on juniors; indeed, I have too much reason to be grateful to them to think of playing the part of Pooh Bah, K.C.

Speaking of super-leaders I must not forget Sir Henry James (afterwards Lord James of Hereford). He was, when first I knew him, a dark, dapper man with small features and

a powdered wig, and even when he was old he continued dapper. He has made a reputation, it is said, by refusing to become Keeper of the King's Conscience because he had a conscience of his own. He would have been Lord Chancellor when Herschell got the woolsack if he could have made up his mind to support Home Rule in 1886.

He was not a great hand at making up his mind ; indeed, my experience of him was that his mind lacked a backbone. He was one of those who fought well while winning but are cravens in retreat. The time I saw most of Sir Henry James was in the Inquiry into Railway Rates and Classification which took place before Lord Balfour of Burleigh and Sir Courtenay Boyle in the years 1888-89. He led for the Associated Railway Companies and had with him Mr. Pope, Q.C., Sir Ralph Littler, Q.C., Mr. Pember, Q.C., Mr. R. S. Wright, and Mr. Alfred Cripps. By what might be called a " fluke " I led for the traders against that formidable phalanx. The way it came about was this. Long before the Inquiry began I received a guinea retainer on behalf of a little trader in Wales. After that I received retainers from the Great Northern, the Lancashire and Yorkshire, and other railway companies, and my clerk properly accepted them, thinking that there could be no incompatibility between the interests of these companies, whose lines were in other parts of the United Kingdom, and the interests of the little trader near Newport. Ultimately, however, it was pointed out that the principles which were settled in the case of one railway would govern the whole, and so—all because of that confounded guinea—I had to give up the idea of appearing for the railway companies.

The position was so serious that it justified the use of the word " confounded," for as a fact I had to return all the railway retainers and that small trader in Wales never sent me a brief. However, when it became known that I was not appearing for the railways I had briefs from the Mansion House Association of Traders, the Lancashire and Cheshire traders, the Mining Institute of Great Britain, and a great number of other bodies and persons delivered,

and when I had to open the case for the traders—which, by the way, took me four days to do—I had thirty-five different clients.

But it was not about myself I meant to speak, but about Sir Henry James. He conducted the Railway case with great ability and some of his cross-examinations were excellent. He was paid a Refresher of 100 guineas a day, and was, in that case, quite worth it.

But my diagnosis of his invertebrate condition depended on cases in which he was my leader. He led me for the Mansion House Association on Railway and Canal Traffic against the London and South-Western Railway Company, when the complaint to the Railway Commissioners was that the Railway Company gave an undue preference by charging rates for the carriage of foreign merchandise lower than those charged for the carriage of similar merchandise produced at home. It was an extremely important issue and Sir Henry James opened the case before the Commissioners, Mr. Justice Collins, Sir Frederick Peel and Lord Cobham. Sir Richard Webster appeared for the Railway Company, and Sir Ralph Littler for the Corporation of Southampton.

The case went on for some days, I forget how many, but it was obvious that the Commissioners were against the applicants and in favour of the Company. It came to the last day of the hearing and there was a consultation appointed in Sir Henry James's room at the Law Courts for the morning of that day. We, I and H. Sutton (afterwards Mr. Justice Sutton), were there, but Sir Henry James did not turn up, and then there was a note handed to our clients from him saying that he was slightly indisposed and hoping that I would reply on the whole case. I did, and the decision was against us, but I am glad to think that his indisposition, upon that occasion, was slight.

Again he led me in the House of Lords in the Halkyn Mines Drainage case, and thinking the House was against our contention he again shirked the reply; but in that case we "pulled it off," notwithstanding the absence of our leader.

But Sir Henry James had, if he had not courage for a

rearguard action, many excellent qualities. I have heard of many kind actions he has done, but I may be bound to add, out of veracity, that if he never forgot the poor he had a profound respect, perhaps too profound a respect, for the rich and great.

CHAPTER VI

SOME OTHER MEMBERS OF THE PARLIAMENTARY BAR

Some other Members of the Parliamentary Bar—Mr. Herbert Saunders, K.C.—Mr. Pembroke Stephens, K.C.—Mr. Michael, K.C.—Mr. O'Hara—Mr. Frederick Clifford, K.C.—Work on Private Bill Legislation—Reports of Referees—Mr. Shiress Will, K.C.—Went into the House of Commons—"Take a Seat"—No Resurrection at the Bar—Made a County Court Judge—Story Concerning Mr. Warmington, K.C.—A Seat and a Baronetcy,—Mr. Ledgard, K.C.—Mr. Erskine Pollock, K.C.—Mr. Claude Baggallay, K.C.—Mr. C. C. Hutchinson, K.C.—Mr. Dankwerts, K.C.—Sir Edward Boyle, K.C.

THERE were, of course, during my forty years at the Parliamentary Bar many other counsel, besides those I have mentioned, many of them quite notable in their way. Herbert Saunders was a delightful man, and a persuasive advocate. He was, I think, the son of Mr. Saunders who was secretary to the Great Western Railway. That gentleman once came into Committee in deep mourning, and one of the counsel asked, "Who is Saunders in mourning for?" Someone—I am not certain who—answered, "For the late Great Western trains, of course."

Pembroke Scott Stephens, one of the most amiable of men, was painstaking but long winded. He had a way of half closing his eyes which made him look very cunning. Someone said of him, "No one ever was so wise as he looked." And certainly an owl was not in the running with him. There was a man I knew something of who went up to Oxford as an undergraduate and was asked by some inquisitive youngster, "What do you do?" I conclude the question referred to his

athletic proclivities, but he answered in his thin voice, "I live with my aunts." Pembroke Stephens, I think, for many years "lived with his aunts," but ultimately he married. He was really a lovable man and should have been loved earlier. He had a large practice as a junior, and was a pillar of the Society of St. Patrick.

Michael had a thick-set body, a head of white hair, and white whiskers and a lazy smile. He had been a doctor before he came to the Bar, and rather traded on his reputation for a scientific knowledge he did not possess. He was the joint author with Mr. Shiress Will of a book on the *Law of Gas and Water*. He did his work fairly well but never became one of the great leaders of our Bar.

There was an Irishman, O'Hara, at the Bar in those old days. He was a member of the Irish Bar and I think connected with the Irish Office. He was a man with a considerable Irish accent and nothing else remarkable about him except imperturbable good-humour, and that, after all, is no small possession. Another minor member and junior, although he was old when I knew him, was Mr. Salisbury. He had been in the House of Commons and used to tell the Committees of his experiences in the House. He was not a real advocate although a very persistent man, and his appearance was somewhat unique. In one of the plays in which Mr. John Hare appeared he was made to say, "Is it not awful that people with immortal souls should not make up for the deficiencies of nature by the appliances of art?" and Mr. Salisbury had neglected such opportunities, for he had a toothless smile!

Frederick Clifford, who suffered much, had a corrugated face which was twitched by suffering into a grim smile when the twinge took him. He was a man of considerable culture and quiet ability. He, like Pembroke Stephens, had been connected with the *Times*, and was one of the principal owners of an important provincial newspaper. He, with Pembroke Stephens, began the series of Reports of the Cases as to *Locus Standi* before the Referees; and he wrote an able book upon *Private Bill Legislation* which all have

praised and few have read. He was a collector of antiques and uniques and had as many as eight or nine grandfather clocks which, whatever their merits as time-keepers, had pretentious cases. He was an exceedingly well-informed and agreeable companion.

It is said that if you look carefully at anyone you can find out in him or her a resemblance to some animal. Shiress Will, K.C., looked a little like a pig—but he wasn't one. He was a hard worker, a diligent student, a plodding counsel, but was not brilliant as an advocate. He was what anyone who knew him would call an exceedingly good fellow. He had a fair practice as a junior at our Bar, but he developed a curious ambition to be a Member of Parliament—a temporary form of the insanity of ambition from which I myself have suffered—stood for his native Montrose Burghs and was returned.

A time came when Mr. John Morley, having lost his seat somewhere, wanted a seat, and Shiress Will, with the politeness of a man in a bus to a standing lady, offered him his, and John Morley represented the Montrose Burghs in his stead. It is quite a curious feature of Scotch constituencies that they seem willing to be represented by Englishmen or even by further-afield foreigners. The Scottish prophet seems to have no honour in his own country. But I am not going to impugn the taste of the electors of the Montrose Burghs. Shiress Will having, in his obliging way, given his seat to Mr. Morley, returned to the Bar—or tried to. He was, however, not successful. Indeed, there is no resurrection at the Bar. He was a man of great assiduity, with a painstaking ability, but was a little doughy and heavy as an advocate. Still, there was something in store for him, and in recognition, not of his getting into Parliament, but of his getting out, he was made a County Court Judge; and as he was careful and had a conscience I have no doubt he would, if he had been spared, have made a good judge.

Someone wrote of him,

" Some serve their party, capturing a seat,
Some indirectly, suffering defeat.
But few have served a cause so well as he :
He sat, retired, and left a vacancy."

Once Shiress Will was in a Right-of-Way case. He had a brief for the public resisting the owner's claim to shut up a footpath. The owner, who was in Court, saw him in his wig and gown and said, pointing to him, "Who is that?" "That," said his solicitor, "is Mr. Will." "I don't like that," said the owner, "for where there's a will there's a way."

There was another excellent example how a man may gain by self-abnegation. Mr. Warmington, K.C., a leader at the Chancery Bar, a little round man not very well set up, and whose muscles at last, poor man, hung about him in limp folds, had a very safe seat for Monmouthshire at a time when Sir William Harcourt wanted to get again into the House of Commons, whence he had been rejected by some scrupulous constituency. Warmington, with a self-effacement which was foreign to his character, gave up his seat to that big, great man, and in time (of course there may have been no connection between the two events) was made a baronet. It is in these coins that Governments pay for such useful services. Warmington had somewhat rough, off-hand manners, but was a man of very considerable ability, which had pushed him into his prominent position at the Chancery Bar.

Ledgard, who rose to be a "silk," but never attained to any eminence as a leader, had one of those sharp-featured, eagle-beaked faces which threaten to become nut-crackers in age. I once heard someone say that his words were acidulated drops. He was, I have no doubt, painstaking and was always pleasant. Indeed, he had a creed that in the Lobbies the way to get on was by keeping on good terms with everybody. Why he ever got his practice I never could surmise, and now I do not know exactly why he disappeared and was no more seen amongst us. He died, however, before his time.

Then there was Erskine Pollock, K.C., who only died about

a year and a half ago. He began at the Common Law Bar, and "devilled" for Alfred Thesiger, but ultimately found a foothold in the Lobbies and at one time acted for Lord Bute—and was angry when the retainer was withdrawn—and latterly for the London County Council in their Tramway Bills. He was a tall, clean-shaven, good-complexioned man who talked fast and was something of a carping counsel. He never quite got into the front rank, but he was persevering in his work. He lost his eldest son in this war before he himself died, and his one other boy was killed in action not long after his father's death. Pollock had not, on the whole, a happy or successful life. He was a grandson of the Lord Chief Baron and knew his Burke—not Edmund, but Sir Bernard Burke's great work—well. He had a taste for engravings and was very useful to his "Inn," for he collected many engravings and mezzotints of men who had been members of "Domus" in the past.

Claude Baggallay, K.C., had advantages that other men did not have at the beginning of his time in the Lobbies. He was by marriage connected with one of the great firms of Parliamentary agents. But he used his opportunities well, and did his work satisfactorily. He was a little stodgy as an advocate but he was careful and good-humoured and died all too young.

C. C. Hutchinson, K.C., also died before his time. He came to the Bar later in life than most men do, having tried his hand at some chemical trade before he embarked upon a forensic career. He was a big, paunchy man with a face upon which a good-tempered smile was at home. He was quick witted enough, but his ability could not conceal the fact that he had skipped the school for the counting-house. He was perhaps on too good terms with engineers and solicitors to satisfy less successful but more punctilious rivals. He made many friends and no enemies. He bought and sold pictures, but some of his acquaintances doubted his knowledge of art and thought some of his Old Masters had not reached their teens.

Once in a case at the Westminster Palace Hotel the noise

which was made by the traffic in the street made the further hearing of witnesses or counsel impossible. Hutchinson got up and closed the window, saying that the "Horses outside and the asses in were making such a noise that he could not hear himself speak." Counsel on the other side said his learned friend had no right to give away his own witnesses.

Dankwerts used sometimes to bulge into the Lobbies, and brought his manners, which were none of the best, with him. If I remember aright, Mirabeau's brother was called "Tonneau" or "Barrel Mirabeau," and certainly the same epithet would have fitted Dankwerts and C. C. Hutchinson like a glove. Upon one occasion when there was a long local inquiry before Major Norton at Stoke, in which both of these learned gentlemen bulked large, Dankwerts, who had a way of poking elephantine fun at his colleagues, said he believed Mr. Hutchinson—who was not really like him, but had a face all chins—went about trying to be mistaken for him, Dankwerts. When the leader—it was the Potteries Towns Federation Case—came to reply he said that if it was true that Mr. Hutchinson went about trying to be mistaken for Mr. Dankwerts he would advise him, if he succeeded, to commit suicide. But Dankwerts, although often rude, and although he was in the habit of bullying the judges, was like a winter pear—soft within if hard outside, and he had when he laughed some merry wrinkles round his fat eyes.

Sir Edward Boyle, a round man and short, some would have called him chubby, had been an auctioneer before he came to the Bar. He got into some Parliamentary cases and did a fair amount of compensation work. He never had exactly the "cut" of a counsel, although he was an acute man and knew how to approach men through their area gates. He left us to go into the House of Commons and was created a baronet; no one knew exactly why, but no doubt there was some excellent reason. I saw a good deal of him, for we came home from Singapore together in the same boat. But then his health was beginning to break, and it was not very long afterwards that he died. I always found him kind and courteous.

CHAPTER VII

WATER SUPPLY

My First Brief in Parliament—Water Company took Water from Calder—A Good Ink—Langsett Scheme of Mr. Thomas Hawksley—Opposition continued before Lord Aberdare—Question of Alternative Schemes—Mr. Shaw and Sir Edmund Beckett—Water Brought from Great Distances—Large Impounding Reservoirs—Underground Sources—Wells—Thames Water—Pollutions Above the Intakes—Sand Filtration—Dr. Houston's Experiments—Sedimentation in Reservoirs—London has therefore not gone to Wales for Water—Decanted Thames Water—Hard Waters Made Soft—Soft Waters acting on Lead—Prevention—The Chlorinisation of Water—Cambridge Bill—Meymott Tidy and Silica—No Human Hairs in Thames Water—Mr. Michael's Joke—Rivers Purifying Water—Water for Great Yarmouth from River Bure—Salt in Water—Sir William Ramsay's Invention—Compensation in Water—The Rainfall.

I HAD a considerable number of cases relating to water supply in my time, and some of the questions connected with these have some interest. The first brief I had in Parliament was with Mr. Venables, Q.C., Mr. Granville Somerset, Q.C., and Mr. Thomas for the Wakefield Waterworks Company, when they sought to go for a new supply to Langsett, which was in the watershed of the river Don. Their then existing supply for Wakefield was drawn from a place called Stanley Ferry on the river Calder, some miles below the town. That it had ever been a fit source of supply seemed doubtful, but that if it ever had been it had now ceased to be a proper source for a community was certain. The sewage of the town and a great many other towns got into the river Calder above the place where the Company had its intake. There is a facsimile reproduction of a letter, not written with ink but written with

Calder water, in one of the reports of the River's Pollution Commission—and really it was an excellent mulatto substitute for ordinary ink. The Company had done its best with the assistance of ingenious gentlemen who had patents, I have no doubt, to wash their black water and to make it a fairly potable fluid. They had, of course, long filtered it by means of sand filters, and in doing so had, as I shall show hereafter, been wiser than they thought. Then they tried Polarite and ferrosone filters, but at last they shouldered their burden and proposed to go to Langsett on the river Porter or Little Don, a scheme which was designed by Mr. Thomas Hawksley.

The Bill was opposed by Sheffield, by Mr. Fox, who manufactured Paragon umbrella frames, and had his works on the river which the Company proposed to impound, and by others; and although it passed one House, the Commons, it was rejected in the House of Lords by a Committee presided over by the first Lord Aberdare, who, as Mr. Bruce, had been a somewhat nervous Home Secretary. But that was not his fault, for the Home Office is a very nervous place to be in, and most men have lost the reputations which they took to it before they have been very long in that ticklish department. Even a strong man like Henry Mathews (afterwards Lord Llandaff) was shorn of some of his repute over the "Miss Cass Case," a luckily forgotten scandal. And even some recent holders of the office have left it without achieving fame.

But the Wakefield Water Bill raised some very important questions. One was whether petitioners against such a Bill were entitled to go into alternative schemes. At first sight nothing could seem more relevant than for a petitioner who objected as Sheffield did to the Wakefield Company coming out of its own watershed into the watershed of the Don, to say, "There is no necessity for you to come poaching on our water preserves; you have an excellent source of supply which you can obtain by a smaller expenditure of money, nearer to your own door and in your own valley." But against such a suggestion of an alternative scheme it is

pointed out that that would involve the Committee in two enquiries : one as to the promoters' proposal and the other as to the petitioners' suggestion. Besides, it would be impossible for a Committee to weigh the merits of the proposal and suggestion unless they had elaborate plans and sections of the alternative scheme, as they had of the one referred to in the Bill. If alternative schemes were to be admitted it would be competent for every petitioner to throw out irresponsible suggestions which would only embarrass the promoters and would not really assist the Committee. In that case it was decided—and the rule has been followed ever since—that a Committee will not go into an alternative scheme suggested by petitioners unless they have deposited such plans, sections, and estimates as will enable the promoters and the Committee to test the validity of the suggestion. It is curious that ultimately the town of Wakefield having failed to get the water of the Little Don, and after some further attempts to get a good supply, did go to a place called Green Withins, which was in the valley of the Calder ; but that was long after the failure of the Langsett proposal.

It was in this Bill in the second House, when the promoters had left out Mr. Thomas and put in his place a local barrister of Leeds, who was a big man—weighed many stone and had a deep reverberating voice which sounded like slow, tame thunder—that a small passage-at-arms took place between this ponderous gentleman and Sir Edmund Beckett, who was appearing for Messrs. Fox in opposition. Sir Edmund had said something or put some question to which Mr. Shaw objected in a voice like an organ recital.

" You needn't jump up," said Sir Edmund in his clear voice, which cut like a knife ; to which Mr. Shaw, still, as it were, speaking from the cellar, said, " I did not jump up, Sir Edmund Beckett." " Oh no," said Sir Edmund ; " we will say that you rose with the greatest dignity," and there was a ripple of laughter which was perhaps not to Mr. Shaw's slow liking.

But this has nothing to do with water supply.

One of the Roman aqueducts—really artificial rivers—brought the water sixty-two miles to Rome. The Vyrnwy reservoir—an artificial lake in North Wales which supplies Liverpool—is sixty-eight miles from the town. Birmingham has gone eighty miles for its water, Manchester a hundred miles, and Leicester sixty. These towns have not only had to go far afield for their supplies, but have been guided in their choice not only by the abundance of the rainfall in the district to be tapped, but also by the facilities afforded in the selected spot for the construction of large impounding reservoirs. But, of course, besides these stores or cupboards for water, towns have had recourse to springs, to rivers, and to wells which tap the underground sources. In the old days many towns took their water from the nearest river, but large districts and many important towns are dependent upon deep wells for their water supply. The East End of London is largely supplied from these subterranean sources, the wells having been sunk in the time of the East London Waterworks Company. The water in these wells is supposed to have percolated into the earth and got into the chalk in Hertfordshire, and that county has been a very frequent complainant that the London pumping has dried its wells, and robbed its water-cress beds. But although a good deal of well water is supplied to London, the bulk of the water used in the Metropolis is taken from the Thames and the New River. The Thames water is now—although at one time that was not the case—taken from various points above the tidal range, but the river above these intakes is a stream receiving the more or less purified sewage of very large populations. The fact seems to be that while the raw river water of the Thames could not be recommended as good drinking water, the water as supplied is really a manufactured article.

In the first place it has always been filtered before delivery, at least from the year 1839. In that year engineers adopted the method of filtering water through sand with the object of making the water bright and clear when delivered to the consumer. In those days filtration was regarded as a

mechanical process, and chemists were very sceptical as to the usefulness of this straining out of the water some of the dirtier matter in suspension—for on analysis they found that there was little or no chemical difference between the filtered and the unfiltered water. But, as I indicated before, the engineers had been much cleverer than they imagined, and in filtering the water through sand, while they imagined they were only carrying out a mechanical process, they really were bacteriologically purifying the water, for on the top of the sand there is soon found a film of these living organisms, and it is to them that we owe the purity of the water, and not to the sand upon which they rest. Thus the river Thames water at Hampton contained 1,644 micro-organisms in about twenty drops of water, and when passed through the sand-filters there were only thirteen of our enemies in as many drops of water. A war of attrition, which we have been hearing something of, of late—this!

But the experiments of Dr. Houston and others show that the mere storage of water in large reservoirs like those at Staines for a week disposes of millions of these germs in water artificially infected with cholera vibrios, and have demonstrated that a week's storage of river water is an enormous protection against "cultured" or uncultured bacilli of typhoid fever, and that "less than a month's storage is an absolute protection against typhoid fever." Under these circumstances it is not to be wondered at that the Metropolitan Water Board has abandoned the idea of going to Wales for a supplementary supply of water, which had been suggested and which would have cost something like £200,000,000, and in the Session of 1911 went for a Bill to authorise the construction of large reservoirs in the neighbourhood of the existing ones at Staines for the purpose of decanting the raw river water at a cost of £6,900,000, which scheme was calculated to meet the wants of London for thirty years, or until the population of the Metropolis amounts to some 12,000,000. The Board was successful in getting through Parliament the greater part of

the scheme so proposed ; and London must go on drinking this decanted water, the manufactured article, as it has in the past, and will no doubt continue to be one of the healthiest of the large towns.

It would seem then that the vogue of "doctored" water is very considerable in these days, although at the time the great impounding schemes for Glasgow, Liverpool, Manchester, Birmingham, and other towns were sanctioned public opinion was all in favour of hill waters, which were to be, like Cæsar's wife, "above suspicion." But the methods of treating "diseased" waters are many and ingenious. In India and China they have long treated water with alum to get rid of clay by coagulation. Sedimentation purges, as we see, infected waters of micro-organisms. Very hard waters are softened by a method that sounds like homœopathy and takes lime out of water by adding lime to water. Then soft waters from the hills, which act rapidly on lead and in that way become poisonous, are made immune by adding powdered chalk to the water. But perhaps our worst enemies in water are the microbes, and it has been suggested that they can be killed by exposure to the ultra-violet rays of the spectrum. A somewhat interesting suggestion was made in the case of the Cambridge Water Bill which came before Parliament about four years ago. The Company drew its water from wells in the district where the somewhat increasing village of Cherry Hinton lies, and as there was a chance of the carriage of possibly infected sewage by the percolation of water to these wells the people of the University town began to be nervous—for a sanitary scare is always in ambush in times of peace—when it was reported that a typhoid epidemic had occurred in one of the public institutions in that district. The Company took excellent advice, and Dr. Sims Woodhead, after careful experiments, reported that any microbes which did get into the water could be got rid of by the process of chlorinisation. The Company promoted a Bill to raise the capital to carry out the works on the lines he had suggested. When, however, counsel were consulted they thought that on the

strength of what were little more than laboratory experiments the Cambridge public would not be content with this kind of apothecary's water ; and while still advising the Company to go on with their proposed Bill as to the chlorinisation they suggested that as a "second string to their bow" they ought to include a new source of supply further afield and free from the risk of contamination of any sewage of village communities—as an alternative. It was on the whole prudent advice, although prudence is perhaps a cowardly virtue, for when the Bill came before Committee, although the members were very much interested in the proposals for the execution of morbid bacteria they expressed a strong opinion in favour of the other scheme, which was, in fact, included as an alternative in the provisions of the Bill ; and as that scheme involved considerable capital expenditure they sanctioned the increase of the Company's charges.

In another Bill which was promoted much earlier Mr. Meymott Tidy, an impulsive but unflinching chemist, had proposed the treatment of water so as to prevent its action upon lead by means of silica—I think in the form of broken angular flints. He made much of the importance of "points" in the flints, and one of his refreshing illustrations was that we saw that almost all the bubbles in a champagne glass came from the place where the converging sides made a point—but how he connected that interesting fact of "beaded bubbles winking at the brim" with the silica treatment I am unable to recollect, although I was willing to make the experiment over and over again. I only remember that one rather flippant opponent, who was also, I believe, a chemist, declared that Dr. Meymott Tidy was "silica silly."

As I have mentioned Dr. Meymott Tidy I should like to give the reader some idea of that exceedingly interesting and theatrical individual. He was tall and thin, with long hair and a peculiarly living face and jerky, impulsive manner. When he came into a room he came with a little rush, and when he went into any matter it was also with a kind of

spasm. He had great confidence in himself, but he *once* had to admit that he had made a mistake. There was a long Inquiry before Lord Bramwell, as Chairman, and a Commission as to the disposal of London sewage by the works at Barking on the north of the Thames and Crossness on the south. The people in and near Erith complained that there were great accumulations of solid matters in the river in their reach, and that the discharged effluent from the works of the London County Council and the solid matters it contained were swung up and down like a nasty pendulum on the tide and never got to sea at all.

The Inquiry was a long and interesting one, and Dr. Meymott Tidy was one of the chemists who gave evidence for the Corporation of London. I appeared for the City with Sir Richard Webster, Q.C., and Mr. Lumley Smith, Q.C. According to Dr. Meymott Tidy—in a sentence which reminded me of a sudden sortie—"One of the most *remarkable* things which he had noted in his many investigations of Thames water was that in it he had never found a human hair."

It did strike one as a curious fact until in a less impulsive moment Dr. Tidy admitted that perhaps it was because he took up the water for his investigation and analysis by means of a pipette, and that as that would only take up a human hair if it happened with its little nozzle to meet the hair end on, the negative discovery was perhaps not so remarkable as it had at first sight appeared.

It was in that case that, perhaps in the absence of my leaders, I had some passages-at-arms with Mr. Bidder, who appeared with Mr. Michael against the City. When flint meets steel the sparks fly, and I suppose we had been making ourselves as disagreeable to one another as courtesy would permit. It was upon that occasion (I have to remind you that the whole inquiry was about the sewage discharged at "Barking" and "Crossness") that Mr. Michael suggested a question on paper which was handed to me, and I believe I sent it on to Lord Bramwell.

"We," he wrote, "want to know which is worst—Bidder's barking or Balfour Browne's crossness?"



H. W. CRIPS, ESQ., K.C.

Dr. Meymott Tidy always claimed to be a medical man as well as a chemist, although he told me that he had only once been called in to advise medically, and that he went to Islington for the purpose. When he got back to his house in Mandeville Place he gave the cabman, as he thought, two shillings, but unfortunately it was the two sovereigns of his fee that he had handed over, so that his net receipts as a medical practitioner were only two shillings. But, as I say, he believed firmly that rivers purified themselves and got rid of all organic matter by oxidation and by means of the animal and vegetable life which they contained. On the other hand, Sir Edward Frankland, very often quoting the Lausan case, where the germs of typhoid got in some water channels through a mountain, held that no river in England was long enough to get rid of such specific germs. The difference in these diametric views was perhaps due to the fact that one of the gentlemen was a chemist and the other a bacteriologist as well. And it is a fact that in the Cheltenham Water Bill, 1878, Sir Edward Frankland said, "The chemist cannot point to the specific infecting substance," but "can tell you whether the water is open to suspicion. Whether it is injurious to health can only be determined by physiological tests."

In a case where the Great Yarmouth Water Company proposed to supplement its supply of water from the Broads by taking water from the River Bure, objection was taken to the Bill on the ground of the impurity of the proposed source. When the wind was in the north-west the waters of the North Sea were heaped up by the spade-work of the gusts, and when that happened at the same time as a spring tide the waters of the Bure were held or backed up, and it was said that owing to the "mixing" action which takes place between sea and river water, the waters of the river at the point of the proposed intake of the Company would on these occasions be salt or brackish and also possibly infected by the sewage of towns nearer the mouth of the river. It was argued that it was ridiculous to supply a river water impregnated with chloride of sodium to two towns like

Yarmouth and Lowestoft. But here science came to the help of the promoters. The occasions when the north-west wind and the high tide synchronised were, of course, very rare, and it was proposed by the Bill that whenever such an event took place and when there were more than twenty grains of common salt to the gallon (that is 20 in 70,000 parts) in the Bure water the Company should cease to pump from the river and supply the towns only from the stored water in Ormesby Broad. Sir William Ramsay invented for the occasion a little instrument. It was a small glass cell containing two copper plates. This was to be sunk in the river, and as long as the plates were in contact with fresh river water no electric current passed between the plates. But when salt water was substituted for fresh and when it was only sufficiently salt to have twenty grains to the gallon, then the electric current passed and at once rang a bell in the pumping station. This was to be the danger signal, as B. col^d when found in drinking water is the red flag. If the cell was placed in the river two or three miles below the intake there would be timely warning of the up-rush of sea water, and it was explained that the apparatus could be made not only to ring a bell but to stop the pumping engine. The apparatus was shown to the Lords' Committee and on salt being added in small quantity to the water the bell rang. One of the counsel, who was a cynic, said,

"Ah, Sir William, if you had been before the Royal Institution it would not have worked." He must have had a strange idea of the experiments in Albemarle Street. But it did "work" in Westminster and the Company got its Bill.

One of the interesting questions which, of course, arise in relation to water supply is as to the rainfall, and there is another to some extent dependent on the answer to the first, and that is as to the compensation to be given to those whose water rights are affected by the scheme. The determination of the rain which falls upon any area is not merely a question of curiosity to the public and umbrella-makers, but it is essential before an engineer can design the

works which are required to enable him to take the waters of the area to the town that is in want of them. When we remember that the average rainfall in Britain is about 25 inches and that the rainfall at Seathwaite in Cumberland is about 139 inches per annum, it is obvious that it is necessary in every case to come to some definite conclusion as to the quantity of water the heavens are going to give before you can determine the height of your dam, the size of your conduit, or the amount of compensation water. The late Mr. G. J. Symonds organised a careful system of observation of the rainfall at more than 2,000 stations in the United Kingdom, and the records from these and other stations are contained with useful accuracy in the British Rainfall. Very often in the old days Mr. Symonds and Mr. Glaisher, both Fellows of the Royal Society, were examined before Committees of Parliament ; and even in more recent times we have seen Dr. Mills, who is a great authority on rainfall, in that uncomfortable witness-chair.

The Water Works Clauses Act contemplated compensation in money by the Promoters to anyone whose interests in " water " were damaged by the scheme, but it very soon became evident that it was very difficult to measure the loss sustained by a mill-owner or a riparian owner by taking away a portion of the water which flowed past his wheel or through his estate, in money, and a custom has long prevailed of compensating them in water. At first sight the idea of compensation water seemed to some to be an ingenious quibble. The object of the promoters was, of course, to take water away from the river and to carry it by means of pipes to the town to be supplied, and it is not difficult to understand a mill-owner regarding the proposal to take a million gallons of water a day out of the river and to pay him for that abstraction by giving him 500,000 gallons in compensation as a clever but unscrupulous engineering " confidence trick." But in time those who are interested in rivers have become convinced that some such arrangement is not, on the whole, unfair.

The fact is that rivers, as we know, are not to be depended

upon. They flow from disordered hills, and their rise and fall depends upon disordered weather. In winter they are swollen into floods which spread over and devastate the land, and during which the black mill-wheel is of no use. In summer they dribble in pellucid threads over the stones, and again the great wheel stands idle with empty buckets and there is scarcely enough water to give the thirsty cattle a drink. Now by the construction of great reservoirs like the Vyrnwy one of Liverpool or the Derwent reservoirs of the Derwent Valley Water Board, the engineers catch the floods, prevent the disastrous consequences of a spate lower down, and having stored the winter's overabundance, can afford to increase the summer flow of the stream greatly to the benefit of the mill-owners and riparian owners on its banks. There was, too, from the point of view of the promoters who made large reservoirs in the Penine range which supplied the manufacturing districts in Lancashire and Yorkshire, an obvious advantage in giving compensation in water. If they had to compensate, say, ten mill-owners on the stream for depriving them of the water to work their mills in money that meant ten separate sums of money. But if, say, 500,000 gallons of water a day was adequate compensation to one, if he passed that on when it had turned his wheel the same water would put its shoulder to all the nine other wheels down the valley and set the machinery inside clacking cheerfully. But although water compensation came to be a rule in these cases, the exact proportion which was to be taken by the promoters and which was to be given in compensation to the river was not determined without many and great fights in Parliament; and perhaps it is because of my pleasant memories of some of these that I am becoming too prosy over the subject of compensation water. It has, however, now become almost the invariable custom to allow the promoters to take two-thirds of the available rainfall—for all that falls cannot, of course, be caught and stored—for the town supply, and to make them give one-third of such rainfall in compensation. And when the amount of water that can be

made useful, after deducting for evaporation and absorption and getting the average of three dry years, has been determined, it is gauged and measured and, on the whole, everybody is satisfied.

CHAPTER VIII

THE RAILWAY COMMISSION

Railway Companies' Monopoly—Power to Vary Bills—Must Charge Equally to All—Railways Intended to be Roads Open to Public—A Right Without a Remedy—Clipping the Wings of Parliament—Foreign Goods not to be Preferred—Circumstances not Similar—Act of 1854 as to Preference and Facilities—Transferred to Railway Commissioners, 1873—The First Commissioners, Mr. Macnamara, Mr. Price, and Sir Frederick Peel—A Man of Great Ability—Act of 1888—Judge of High Court made Chief Commissioner—Mr. Justice Wills, Mr. Justice R. S. Wright, Mr. Justice Collins (Lord Collins)—Counsel before the Commissioners—Sir Richard Webster as an Opponent—The Question of Reasonable Facilities—Courts and Legislation at Loggerheads—Railway Company and the Carrying of Passengers—The Power of Owners to make Branch Railways—Duty of Railway Companies to Afford Facilities Limited—The *then* Condition—Traders Can Pull Strings in Parliament—Got Act as to Private Sidings in 1904—Cases Since have made it a Dead Letter—"Through Rates" to be Given to Traders—But not from a Siding—So Legislation of no Use.

PARLIAMENT found out in the early 'fifties that Railway Companies, which it had in a sense created, had obtained what amounted in certain districts to a practical monopoly, and that they were becoming so powerful that some further regulation in the interests of the public was necessary. Indeed, some people went so far in those days as to assert that if the State did not control the railways the railways would control the State. In the Railway Clauses Consolidation Act of 1845 there was a Section which allowed Railway Companies to vary the tolls

upon their railways, but it declared that such power should not be used for the purpose of prejudicing or favouring particular persons or for the purpose of collusively and unfairly creating a monopoly either in the hands of a company or of particular persons ; and it provided that such tolls should at all times be charged equally to all persons after the same rate per ton per mile, or otherwise in respect of all passengers and all goods or carriages of the same description conveyed or propelled by a like carriage or engine passing over the same portion of the line under the same circumstances, and that no reduction or advance in any such tolls should be made either directly or indirectly in favour of or against any particular person or company travelling on or using the railway.

There is one thing that can be gathered from the words of the Section as to the history of railways. In the early days it was thought that the companies who made the railroad would receive their remuneration in the tolls paid for the use of the railway by the public with their own engines and carriages. That state of things was, however, never realised. Indeed, when a company tried to exercise the right of using the railway as a highway and running their own locomotive and trucks upon it, the Court of Chancery, while apparently admitting that Parliament had conferred that right on the public, said that, as the exercise of the right involved the working of points and signals, and as the Court of Chancery had no power or means of enforcing a continuing injunction, the public right was worth nothing. It would seem then that the legal dictum that where there is a wrong there is a remedy, is a legal fiction. Indeed, in the history of railways it is curious to note how, when Parliament has given the traders certain rights over railways, the Courts of Law have generally whittled these rights away until they mean nothing. This illustrates the process of the clipping of the wings of Parliament.

I may mention one illustration here. It was a case which came before the Railway Commission. There was a Section inserted in the Railway and Canal Traffic Act, 1888,

which prohibited railway companies favouring foreign goods and merchandise to the prejudice of the goods and merchandise of this country. The Section savoured of "Protection," but there it is on the Statute Book. Now it turned out that the London and South-Western Railway Company, having become the owners of the docks at Southampton and desiring to develop the trade of that port in competition with the port of London, carried American produce, like hams and cheese, from Southampton to London at very low rates of carriage, while from Petersfield and places about half-way intermediate between Southampton and London the traders were charged for similar articles much higher rates.

These are recollections, but if they are accurate the facts were that while they charged five shillings a ton for such farm produce from Southampton they charged eighteen shillings a ton from Petersfield, or more than three times the amount for half the distance. This was unquestionably a preference on the part of the London and South-Western Railway Company of foreign goods or merchandise; and the Mansion House Association and the London Dock Companies took up the matter and made an application to the Railway Commissioners for an injunction.

The intention of the Act seemed clear enough, and the Railway Company seemed to be driving a coach and six or a locomotive through it. But there were magic words in the Section—these were "under similar circumstances," and the Railway Commissioners fixed on these and said as the ham and cheese, etc., came in full shiploads from America, and as the farmers here did not deal in shiploads, but in truckloads, the circumstances were not similar and they refused their help. And since that time that protective clause in the Act of 1888 has been a dead letter and is tombstoned with an excellent judgment.

Now it is obvious from this case that the Commissioners must have come to the conclusion that Parliament, when it passed the Section in question, was not aware that foreign produce came to this country in ships. But there it is, a

dead Section killed by the bare bodkin of the Commissioners' decision.

But I have been led away into a digression. I had mentioned the Section in the Railway Clauses Act, 1845, which contemplated the running of private locomotives and carriages upon the railways, and which forbade favouritism, or, as the Americans call it, "discrimination" on the part of Railway Companies. But that Section was held to be insufficient, and in 1854 the first Railway and Canal Traffic Act was passed. It made any undue preference or prejudice of an individual on the part of a railway company illegal; it imposed upon such companies a duty to give all due and reasonable facilities for the receiving, forwarding, and delivering of traffic, and tried to secure that railways which formed part of a continuous route should be used as such in the interests of the public. The enforcement of these provisions was to be the reluctant duty of the Court of Common Pleas in England and the Courts in Ireland and Scotland. It was not without some resistance that these duties were performed by the judges. Some of their spokesmen in the House when the Act of 1854 (called "Cardwell's Act") was before it declared that it was impossible for Courts to determine what was an "undue preference," or "a reasonable facility." But notwithstanding the protest the jurisdiction was exercised at rare intervals until the year 1873, when it was transferred to the Railway and Canal Commission, which was constituted under the Act of that session. This was a new experiment. The Commission consisted of three gentlemen. One of these was to be a lawyer, and Mr. Macnamara, a County Court judge, was the first legal Commissioner. Another was to be a railway man, and Mr. W. P. Price, who was at the time Chairman of the Midland Railway Company, was appointed to fill that place. He looked like a prize-fighter but was a good business man. The third, whose qualification was undefined, was Sir Frederick Peel, the second son of the great Sir Robert Peel. He had been called to the Bar, and as a young man, owing to his tawny hair, was called "Orange Peel." Afterwards he

was Under-Secretary of State, but I forget for which department, and as he was a Member of the Privy Council he became in effect the President of the Court, and his judgments in the various cases which came before the Commissioners are all exceedingly able. Sir Frederick Peel was a tall man with a big head under his orange hair—which was being tempered in its aggressiveness with white when he became a Railway Commissioner—and was a man of very considerable ability and of very untoward manners. I knew him well, for I acted as secretary and registrar to the Railway Commissioners for some years, and yet I found it difficult to determine whether his ungainly manners were due to pride or shyness.

I remember once, we had rooms in the west front of the House of Lords overlooking the Abbey in those days, he made himself so disagreeable that I ordered him out of my room—and he went. It was perhaps a little high-handed of a secretary, and when I came to think over it I came to the conclusion that my days at the Commission were numbered. But nothing happened. Sir Frederick Peel never alluded to the matter again, and when I told him some years afterwards that I meant to give up the office and devote my whole time to practice at the Bar he expressed courteous regret and asked me to remain. There was excellent stuff inside that rough husk of his manners, and then, and in the many subsequent years that I practised before the Railway Commission, I had ample opportunities of forming—as I did form—a very high opinion of the man. I think I am right in saying that after the Railway Commission was reconstituted, as it was under the Act of 1888, when a judge of the High Court was made Chief Commissioner, we had in the Court Mr. Justice Wills, Mr. Justice R. S. Wright, and Mr. Justice Collins (afterwards Lord Collins). I will not mention their successors at the Railway Commission because they are still alive, but although all the three judges I have referred to were able and Mr. Justice Wright as full of cleverness, to use an old simile, “as an egg is full of meat,” none of them made such

a strong, clear, painstaking and able Commissioner as Sir Frederick Peel. His death was a distinct loss to that somewhat anomalous Court. I say "anomalous," for in the first place it is a Court which is not so much a tribunal to administer the law as to manage railways, and in the second place, as was pointed out, the discovery of what is a "preference" may be easy, but when you qualify it with a vague word like "undue" you are asking a kind of commercial conundrum which very few men can guess, and leaving it very much to the "length of the foot" of the tribunal. What, too, are reasonable facilities in the interests of the public is not really a question of law, but an economic puzzle.

In the early days of the Commission as reconstituted under the Act of 1888 I was constantly opposed in that Court to Sir Richard Webster, who usually held the Railway Companies' briefs—and I have no doubt he has given an account of these cases in his *Recollections*—and after he was promoted, to Sir Alfred Cripps (now Lord Parmoor), Mr. Asquith, Sir John Simon, and Mr. Ernest Moon (now counsel to the Speaker). There is nothing more difficult than to criticise one's opponents at the Bar. We are apt to take an inadequate view of the ability of a man who is paid to say that your argument is nonsense and your law bad. But let me try to do justice at any rate to Sir Richard Webster, for, as someone has informed us, we can afford to speak the truth of the dead.

He was an indefatigable worker with a quick, bubbling intelligence. He was a genial man—too genial to all perhaps to impress any one with his real genuineness. He called mere acquaintances by their christian names, which discounted a similar courtesy in the case of old friends. But although he was a hard-working, not very deep man he was wonderfully successful with a profession—the solicitor's—which does not "throw the lead," and so find the "fathoms" of their counsel. Indeed, deep men at the Bar are not nearly so successful as the ripples. We can see the latter, we cannot plumb the depths of the former. The time for the criticism of the others has not yet come. They are

still "in for" the Examination of Life, and the "marks" are not yet determined.

But although I desire to refrain from criticism of men who are alive I have no compunction in recollecting the peccadillos of a living tribunal. Let me therefore say a word or two on the question of Reasonable Facilities. The words "reasonable facilities" are words to conjure with, but all the juggling with these has been done by Courts of Law. Indeed, the Courts of Law and the legislature are very often at loggerheads, and from various matters that have come under one's notice one might suppose that the judges were there only to redress the wrongs of Parliament.

I mentioned that Parliament in 1854 said quite plainly that railway companies were to give reasonable facilities for receiving, forwarding, and delivering traffic upon and from their railways. The Courts set themselves to whittle away the advantages which were to be given to the public under these magic words, and now they mean next to nothing.

Some foolish people thought that it could not be called a reasonable facility if a railway company charged more than Parliament said it might, for by making excessive charges they could prevent people using the railway at all, which could scarcely be a facility for traffic. But the Courts soon put these foolish people right, and held that these words had no reference at all to the charges which the company might make. There still, however, seems to be a doubt as to whether, if the overcharges were such as to impede the use of the railway, the Commissioners might not have jurisdiction, although that is a contradiction of the earlier decision, which was that in the matter of excessive charges the parties have their only remedy in the Courts of Law.

Thus when the same idiotic person found an obligation on the railway company "to afford" facilities, he thought that if they had not provided the works necessary they were bound to do it; but the Courts held that the Railway Commissioners' jurisdiction was confined to dealing with the

railway, stations, and works in existence and in use for public traffic, and that they could not order a new or substantially different railway or station. So here you see, although Parliament said the company should afford facilities, the Courts said in effect the facilities are to be measured by what the railway company has done or afforded.

Where a railway company had a line which they used only for mineral and goods traffic, although the Act under which it was made contemplated its use as a passenger line, the Court refused to make them carry passengers, because the line *in its then condition* would not be allowed to be used for passengers by the Board of Trade. So the "then conditions" was held to be an excellent reason for withholding what was obviously a facility from the public, although it is fair to say the poor public was not responsible for the "then conditions."

When a railway company had discontinued the carriage of passengers on a branch line on the ground that it was worked at a loss, the Railway Commissioners in a rash moment said it was a reasonable facility that passengers should be carried over the line, and it may be noted that the Act which ordered facilities says nothing about the facilities "paying" as a condition of their being afforded. But I say that was, although it seemed reasonable enough, done in a rash moment, for in another case which went to the Court of Appeal it was decided that a railway company which had withdrawn the passenger service on a branch line and pulled down a station upon it because it did not pay, could not by an order of the Commissioners be made to give facilities for passenger traffic, because it would involve the re-erection of the station.

But the duel between the Courts and Parliament was not over. Section 76 of the Railway Clauses Act, 1845, said that nothing was to prevent the owner of lands adjoining the railway from laying on his own land, or on others' land with their consent, a branch railway, for the purpose of bringing carriages to and from the railway, and as I said, the subsequent Act of 1854 said the company was to give facilities for receiving and delivering traffic. That seemed

pretty plain. But the Court of Appeal said that such an owner could not demand a communication with the lines of the railway company under that Section for the purpose of establishing a claim to facilities from the company, and in another case the Court of Session in Scotland held that a private siding was not part of the railway, and that therefore the Railway Commissioners could not order a railway company to deliver traffic at such a private siding.

Thus you see the rights of an owner adjoining a railway have been whittled away to nothing.

But the traders, although they had not the ear of the Courts, had the ear of Parliament, and in 1904 got an Act called the "Railways (Private Sidings) Act, 1904," passed into law, and that enacted that "the reasonable facilities which every railway company was required to afford should include reasonable facilities for the junction of private sidings or private branch railways with any railway belonging to or worked by such company, and reasonable facilities for receiving, forwarding, and delivering traffic upon and from these sidings or private branch railways."

That was "check" to the Courts, but not "checkmate" by any means. The process of cutting down the statutory enactment began again, and the Commissioners held that on an application under that Section they will have regard to the circumstances alike of the applicants, of the railway company, and the general public interested in the working of the traffic upon the railway—a somewhat liberal reading into the Statute of words which were not in the Act—and the order for facilities was refused.

In another case there was a siding which had been made by a contractor in connection with the railway under an agreement which either party could terminate on three months' notice. The railway company gave notice to terminate the agreement on the ground that the siding could not be used with safety to the public and without inconvenience to the traffic on the railway. Under these circumstances, although the traffic had been worked from the siding, and although, of course, the only evidence as to

"public safety" or railway inconvenience was given by the railway company, an order for facilities under the Act was refused by the Railway Commissioners, and so the Act of 1904 became a dead letter, and there have been no more applications from the owners of sidings or branch railways.

A Committee of 1882 recommended that "through rates" as a facility should be ordered at the request of private traders, and a provision to that effect was inserted in the Railway and Canal Traffic Act, 1888. But the Courts have decided that through rates under that Section cannot be asked by a trader from a private siding, and as that was the only case where the privilege of a "through rate" would be of any use, we have another empty shell on the shore of legislation.

If I want to send coal on a railway it is a reasonable facility that the company should secure and convey it in a truck belonging to me if the truck has been properly constructed and duly registered and is properly loaded. But it is not a reasonable facility if I want to send grain or flour in my own wagon, and the company may refuse my wagon if they have wagons of their own, but must not refuse my coal-truck even if they have any number of coal-trucks belonging to them.

The public never seems to understand that reasonable facilities are what the railway company choose to give them, and that they ought to be very thankful they get these. Of course I am assuming that all these cases, some of which contradict one another, are all rightly decided; but if so it shows that the Courts are very incompetent to undertake the difficult work of managing railways in the interests of the public. When the Railway Commission was at first constituted it was spoken of and criticised as a public prosecutor of railway companies, and it did seem a strange thing that a special tribunal was necessary to make these great corporations do their duty by the public, while the remedy of all other grievances was left to the ordinary Courts. Now, however, as one gentleman attempting to be witty has said, "The Commission may be regarded as a Court for the protection of railway companies."

CHAPTER IX

" VIEWS "

Going to See the *Locus in quo*—View an Iron Works—Danger from Blowing up " Old Horse "—Mr. Shaw Counsel in Case—View for Oldham Corporation—Deanhead Commissioners—The Battle of the Oceans—View at Staveley Iron Works—Dispute with Midland Railway Company—The Birmingham Water Scheme in Wales, and the View—Æsthetic View—Tattersal Castle—View of the Lake District from Dunmail Raise to the South—Lord Lonsdale's Claim—Two Views for Glasgow Corporation—One " Beating the Bounds " of the Extended City—The Other, Lochs Voil and Doine, the Rob Roy Country, and Braes of Balquhiddel—" Gave up to the View what was Meant for Mankind."

I AM not here concerned with those sleeping opinions which are sometimes called " views " or with that solemn view which must be taken by a Coroner's jury before they give their verdict, but about a very important part of counsel's duty in certain cases. It has become, I think, increasingly the custom to ask the counsel in Bills, in arbitrations, and in other cases to go and view the *locus in quo*, as it is barbarously called, or to go and look at the place or district which is to be affected by the proposed works or has been affected by the exercise of statutory powers. Many people believe that counsel are better equipped if they have seen the place and are able to talk to the tribunal about things they have actually seen, than if they can only talk about a place on a map, or a diagram. Of course in many cases these views have not been views in the æsthetic sense of the word.

I remember one of my earliest professional views was in a Ferry Hill Iron Company's arbitration case, and it might

well have been my last. The North-Eastern Railway Company had taken a piece of the Company's property, and the question as to the value of it was referred to an arbitrator—I think Mr. Clutton—to determine. Mr. Shaw, a big man with a profound voice, was counsel on the other side. I think on circuit he used to be called " Boanerges "—but instead of being a son of thunder he seemed to me to grumble like a double-bass fiddle with a pain in its inside. In that case a view had been determined on, and on the day appointed, accompanied by an exceedingly intelligent man of great experience in Middlesbro', Mr. Edward Williams, who was one of the arbitrators, I went to view the yard of the Ferry Hill Iron Company and was taken all over it on board a locomotive. But when we were travelling, not without bumps, about the yard, there was a loud explosion and a rain of hard pieces of metal fell upon us and on the tinkling engine.

" I would rather," said Mr. Williams—for he knew—" have given £500 than be there at that moment."

It turned out that the people in the works were blowing up an " old horse," which is the hard stool at the bottom of an old blast furnace, and we had been dangerously near the place when they were doing it, but escaped. The arbitration, which was held in Newcastle, droned through two days, but was ultimately settled.

I remember a view I had with my leader, Mr. Pember, when we were about to promote a Bill for the Corporation of Oldham. They proposed to purchase a reservoir which belonged to the Deanhead Commissioners and also to construct additional storage reservoirs at Castleshaw. The Deanhead Commissioners had constructed a reservoir in an upper tributary of the Calder with a view to equalising the flow of water to the various mills in the valley—the owners of which were rated to the cost and maintenance of the reservoir in proportion to the " fall " of their wheel or the power that they got out of the water.

But that was in the days when water power was everything and when steam power was nothing to a manufacturer ; and a time came when the water power was worth

less, and the Deanhead Commissioners, as their "occupation was gone," had made a bargain with the Corporation of Oldham to sell their reservoir, an agreement, however, which required the sanction of Parliament. Now the Deanhead reservoir was on the eastern side of the backbone of England, the Pennine range, and Oldham was on the west. The water from Deanhead found its way into the North Sea, and if it were taken away to Oldham it would find its way, probably as sewage effluent, into the Atlantic. Now that was felt by many to be a very serious matter. That water should be diverted in this way was in the nature of an outrage. It is true it had been done before. The water of Loch Katrine was taken to Glasgow, but Nature had made it a tributary of the Forth, which threw its mite of water into the North Sea. Liverpool took water which would have found its way to the Severn and carried it to the Mersey.

But the Battle of the Oceans raged in that Oldham case, and it was thought well that counsel should go and see the places affected by the Bill. We went, and that was quite an æsthetic view. We began on the eastern side of the range and saw the Deanhead reservoir on a day all blue sky and larks; we then toiled up the hill on foot, our luggage being carried by some stout Yorkshiremen, to a public-house which sits on the cold ridge between the two quarrelling oceans, where we had some memorable Yorkshire ham and eggs. I know the inn had a picturesque name, but I will call it—for we rested there, after John Galsworthy's—the "Inn of Tranquillity." Then we proceeded, still on foot, down the western slope and so to Castleshaw, where the Oldham reservoirs have since been constructed. It was an ideal view, and I daresay we did our work in the Bill all the better for that clear day in that high country. But the Battle of the Oceans went against us. The Committee sanctioned the Castleshaw part of the scheme but would not authorise the purchase of the Deanhead reservoir.

I was speaking of my perilous view at the Ferry Hill Iron Works. I remember another. The Midland Railway Company for valuable consideration had agreed with the great



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Staveley Iron Company near Chesterfield to do certain services in the works of that Company in connection with traffic which was going by or coming from the railway, and a dispute arose as to whether the agreement referred to the works as they were at the time it was entered into or to the greatly extended works which were now in the parish, and as to the extent of the services that the Railway Company was bound to render under the agreement. The matter began before Mr. Justice Warrington in the Chancery Division, but ultimately it had to go to arbitration. In that case certainly a view of the works, which covered many acres which were gridironed by miles and miles of sidings between the furnaces and cupolas, was a necessary part of the instructions to counsel, and the counsel in the case went down and went all over the works. But even then there was peril, for there were some four or five locomotives running about the works over lines we had to cross. Sometimes we had to “jouk,” as the Scotch say, and let them go by. Sometimes we met great masses of red-hot iron or steel on their way from the furnace to the cupola. Indeed, if my memory serves me, that view with its “walks abroad” over those sidings was nearly as perilous as the streets of London are at the present time.

When Birmingham proposed to go eighty miles to Wales for its water it was proposed that the two junior counsel, myself and Cripps, should go down to Rhyader and view the corrugated country through which the Ellan and the Claerwen flow, and in which it was proposed ultimately to construct five different reservoirs. I do not think that it was suggested that our leader, Mr. Pope, should go, it being thought perhaps that that crumpled country could be well imagined by him without the loss of breath which its unevennesses would have involved.

We went down one winter’s day and slept at Rhyader. We were accompanied by an engineer who had made every arrangement for our comfort, except in the matter of weather. The morning we began our view was bitterly cold. The air was as clear as a first-water diamond and as hard.

Ponies had been provided to carry us up the one valley and over the hills that bulged between the Ellan and the Claerwen and so back to where the two streams meet, and where to-day there is the great Cabin Coch reservoir. But pony-back on such a bitter day was not to be thought of, and with a view to keeping ourselves warm in these high latitudes we walked most of the way, and got back to Rhyader in the early dark evening. We came up to London by some night train which involved a change and a long wait at some junction—Tamworth, was it?—where we slept for some time on uncomfortable chairs and reached town in the morning. But it took some time to thaw the cold of Wales out of our twingeing bones.

But talking of æsthetic views : I went not very long ago to look at a farm which had been cut up by a light railway and where a large sum was claimed for the severance damage and for the flooding of certain fields in consequence of the insufficient conduit provided by the railway company. The exact circumstances of the claim were not interesting, but the half-hour we stole from the view to look at that great tower or “stump” of bricks, Tattersal Castle, and the famous mantelpieces which were rescued by Lord Curzon from emigration to America, was a very pleasant part of that business excursion.

I had also an æsthetic view in connection with a claim by Lord Lonsdale against the Manchester Corporation. The conduit from Thirlmere runs through his lordship's lands for about twenty-three miles. It began to the north of Dunmail Raise, then proceeded in cut and cover along the hills on the other side of the trenchant valley from Helm Crag and so on past Grasmere. The injury to the lands when once the big pipe, which was large enough for a bent man to walk through, was laid down, was very inconsiderable ; but, of course, there was some disturbance to the estate and inconvenience to the tenants during the construction of the works. In that case we had a pleasant two days' view, beginning on the north, sleeping at the hotel at Grasmere, and proceeding southward the following day.

One is paid for a view, but one rather felt one had been over-paid for that agreeable visit to districts which are the æsthetic boast of England and are knee-deep in poetry.

I have, within the last five years, had two important views in connection with Bills of the Glasgow Corporation. One of these was in relation to the proposed inclusion in Glasgow of the great populous suburbs in which as in an aneurysm the blood of Glasgow flowed. We “beat the bounds” of the city for a whole day and were hospitably entertained by the Corporation at night. And we were, no doubt, able to speak with some knowledge as to these overflow populations, and the community of interest when the Bill came before the Committee, although I hope we stopped short of giving evidence about it.

On the second occasion, besides viewing Glasgow bridge, which has had its back overburdened with traffic and required widening, we went and saw Loch Voil and Loch Doine. We motored from Glasgow to Callander and then went up the pass of Lenny along Loch Lubnaig, passed some flooded land between Loch Lubnaig and Loch Voil, and so into the Rob Roy country and the Braes of Balquhiddy. The view was useful, but the Bill came to grief before Lord Ribblesdale’s Committee, and Glasgow has from another source got water which will satisfy its wants for some years to come. But some day, I have no doubt, if Glasgow grows in the future as it has in the past, it will have to go to these sources for its further supply.

But I have said enough about my “views,” although I have had many, sometimes through beautiful districts like those I have been mentioning, sometimes through the slums of cities, or through the clattering machinery of a manufactory, or the thudding engines of a pumping station. All of them have had some interest in connection with the particular case, but could have little here. However, I am still convinced that “the view’s the thing.”

I remember, talking about views, that a friend of mine added a billiard room to his country house with a great bow window which overlooked the park which centuries

had decorated with humble green grass and great proud oak-trees. When it was finished his wife liked it so much that she insisted upon the room being turned into a drawing-room. That was in fact done, and the husband had to console himself with a jocular quotation from Goldsmith, and used to explain to all his friends what had taken place, and finish up with his joke.

"So," he said, "we gave up to the view (few) what was meant for mankind."

But it did not always come off. I heard him tell the story once to a quiet, solemn gentleman, and when he had let off his witticism the man said, without a smile,

"Oh, indeed."

It is hard to bring good wares to such a market, but there are some men who have no sense of humour. I know one man who made a misquotation without seeing how his alteration changed the whole value of the words. John Davidson has written well,

" Every star
Was starrier because of her."

The man, who seemed to have the idea that "birds" and "stars" were the stage properties of the poets, quoted it thus,

" Every lark
Was larkier because of her."

But enough.

CHAPTER X

FLIES

Sanitation—Bradford, and Site for Smallpox Hospital—
Opposition of Residents—The Murderous House-fly—
Cruelties of Children—Campaign of Frightfulness—Pro-
fessor Celli's Discovery—Bubonic Plague and Flies—
Fleas and Disease—Lice as Disease Carriers.

IT is natural that in these days, when instead of the prophet's saying that "Vanity of vanities ; all is vanity," the motto is, "Sanitas sanitatum omnia sanitas," in a practice involving many questions of public health, I should have come across some not uninteresting problems.

One of these was in connection with the adoption of a site for a smallpox hospital in the neighbourhood of Bradford. The acquisition of the land had to be sanctioned by the Local Government Board, and they sent down an inspector to hear the persons who objected to the installation of such an institution in their neighbourhood. It was in that inquiry that I became acquainted with the murderous fly. Most people associate the common house-fly with the paltry annoyance of its persistent "buzz," and regard it as a nuisance instead of an assassin. Of course we know that a distinguished physician who went to South Africa at the time of the Boer war came home and spoke of the two plagues, "flies and women" ; but even that did not rouse the country to the indignation with the fly which has been the effect of certain more recent scientific researches. Since these have come to my knowledge I have questioned whether my remorse for the cruelties of my youth towards the flies which could be caught at an advantage on the window-pane had not been too poignant. Indeed, if I understand aright, a crusade against flies and a "frightfulness" following the

German example, to that form of insect life, is commended as a useful and just "cause."

In 1883 a certain Professor Celli showed that the germs of consumption, anthrax, and typhoid fever could pass through the digestive organs of flies and reappear in the droppings of these, not only alive but in full possession of their virulent disease-producing magic. Some other scientist made experiments with cholera germs. So that the homely house-fly is a dangerous air-torpedo and can convey these poisons of disease through the innocent air from the diseased person to the healthy. But even when they are not thus freighted with disease they are dangerous neighbours and distribute microbes—some of which, at any rate, can produce illness and death—by crawling over substances which are colonies of bacteria and transferring some of these emigrants by means of their feet to food and other materials upon which they alight.

It was shown in the outbreak of bubonic plague in the East in the early years of this century that the flies played an important part in disseminating the virus. But it is not only to the "blue-bottle" that we owe calamity. Fleas are not only malicious in their attentions, but have been shown to be carriers of germs which are more dangerous to man than the irritating pertinacity of this insect tramp. Lice too are the more sedate propagandists of disease.

I forget what happened in the case of the particular hospital site, but it is obvious that it is well to give flies, which frequent such hospitals with more assiduity than the medical students, a very wide berth.

CHAPTER XI

ACCOUNTS

Reading in Chambers—Education by Practice and not by Examination—Reading With an Accountant—"Devilling"—The Importance of Distinguishing Capital and Revenue—Cross-Examination of Accountants—An Accountant Who made it so Clear One could See Through It—Maintenance and Improvement—Revenue and Capital Accounts—Directors' Desire to Pay Good Dividends—An American Railway Company that "Ploughed it into the Road"—Genuine Receipts—Railways and Development of Resources of Country—Branch Line Feeders—Pooling Arrangements to Effect Economy—Districting England—Rating Cases and Accounts—To Arrive at Rent of Small Piece of Line—Difficult Calculations—Hypothetical Tenant—How to Arrive at Rateable Value—Working Expenses—Stations Separately Assessed—Tenants' Capital or Occupiers' Share—The Percentage Allowed on—Accountant's Evidence As To—Statutory Deductions for Renewal of Permanent Way—Two Incidents in Rating Cases—The Sinking Fund of Corporations to Pay off all Cost in Certain Number of Years—To Relieve Posterity—Electric Undertakings—The Wearing Out of Plant—Depreciation and Obsolescence—Necessary to Meet Depreciation out of Revenue.

I WAS asked to advise a friend as to whether I thought it was important that his son, who was going to the Bar and hoped—they all hope to get at the flesh-pots—to get work at the Parliamentary Bar, should read with some junior counsel having a practice at Westminster. I am myself a believer in the education which is given by practice rather than that which is administered in lectures, and I have long been of opinion that it is Courts which test men's qualities as advocates and lawyers and not exam

inations. I told my friend that there were advantages in the step he proposed, but that at our Bar the advantage of reading with a barrister was not so great as in the case of other Courts. At Common Law, for instance, a man who is in a barrister's chambers has not only the advantage of seeing his papers and knowing that he is dealing with actual facts and human interests, but may on occasion, if he has been called to the Bar, be allowed to do "devilling," as it is called in the profession, or "understudy" work, as the players call it, in Court. But I added, "If the boy is going to succeed at our Bar let him 'read' with an accountant." I am convinced that a great deal of some men's success in the kind of work I have had to do, especially in arbitrations with regard to the transfer of undertakings from Companies to Corporations, has been due to the fact that they understood the difference between Capital and Revenue, and knew what accounts were like.

I have often had to cross-examine experienced accountants, and although one may have the assistance of another accountant in the examination of the figures of your opponent, nothing is weaker in a counsel than to be only the mouth-piece to put questions, some of which he does not understand, which are suggested to him by someone whispering in his ear. He ought to understand the object of the cross-examination and understand the principles of accounts to enable him to frame his own questions, and he cannot do that until he has a grasp of the principles of accountancy. He is not a counsel if he is only like a wall—an echo for someone else's voice.

Now, although at first sight it might seem that nothing could be clearer than the distinction between revenue and capital there is no more difficult question presented to business men or to anyone who has to deal with accounts. Not very long ago I was in a case in which an experienced accountant had put in fourteen broadsheet printed accounts of dazzling figures with the view of showing that after an examination of the financial positions of two corporations it would be an advantage to both if they were

amalgamated. Of course his figures counted, but the basis of many of them was estimated expenditures on various matters in the future. This was the snake-in-the-grass fallacy which underlay his calculations. Someone said, "If you will allow me to make the songs of a people I don't care who makes the laws,"—it may be said, "If you will allow me to make the estimates I don't care who makes the accounts."

Now to anyone quite unfamiliar with the accountant's methods these fourteen "tables" would have seemed as difficult of analysis as the scheme of creation, which it has taken science some centuries to only partially unravel. But I remember when I began my cross-examination I said, "You have made this matter very clear." Whereupon the good-looking and candid witness held up his head at the unexpected compliment from a counsel on the other side—until I added, "So clear that we can see through it."

Now it is necessary in matters of account to see through them. Take as an illustration that matter of capital and revenue. It is obvious that if a company fails to spend a sufficient amount annually upon repair, maintenance, and renewal of its works it is playing ducks-and-drakes with its capital, and it is treating as divisible revenue moneys that are essential to maintain its capital. But, of course, in all such matters one has to deal with expert opinion as to what is necessary for repairs and renewals. Sometimes, as when ordinary ballast on a railway is replaced by slag ballast, or when a 94-lb. rail is substituted for an 80-lb. rail, or in other words something is done that is more than mere renewal, something that is more properly called improvement, then it is quite right, of course, to charge the improvement to capital; but it is obvious that a part of the expense ought to be debited to revenue. The directors of a company are naturally desirous of keeping on as good terms with the shareholders as possible, and the way to do that is to pay them good dividends. There is a significant Scotch proverb which has it that "they are always welcome that come with a crooked oxtter," for it

was with a bent arm that gifts were brought in the old days. So the directors are always welcome at the meeting if they come with good dividends. There is therefore a tendency if not to "scamp" the necessary expenditure to keep the "hereditament in a condition to command the rent," still to ascribe as much of the expenditure to capital as possible so as to avoid depleting the receipts out of which dividends have to be paid. It is said of an American railway which for years was in a position to pay its shareholders 15 or 16 per cent., but did in fact pay a steady 8 per cent., that the rest of the money was "ploughed into the road." But it is not many Boards have such prudent self-denial, few prefer to improve the property rather than please the present shareholders; indeed, a good many of our own railway companies have kept their capital account improvidently open and have divided up to the last penny of the receipts, which were in some cases, at least, not such genuine receipts as they seemed.

Railway companies have in the past been full of hope, for the country was developing in such a marvellous way that there seemed to be no end to the increasing prosperity of the carrying trade. It was in these days that the railway companies thought of developing the resources of the country, not only by giving greater facilities for travel, better carriages, more trains, dining and sleeping cars, higher speed, week-end and market tickets and the like, but also by the promotion of Bills for branch lines which were to be "feeders" of the main trunk lines of the country. At that time we were kept quite busy in Parliament. But more recently these high hopes have withered. The development of the country by new branch railways was no longer thought of, and the railway companies began to think of saving money by ceasing to compete with one another, by the economisation of services, and we had the age of alliances, pools, and amalgamations. It was pointed out that the public would gain if, for instance, instead of two passenger trains starting from Manchester, the one from the Central station and the other from London Road at

the same hour, say ten o'clock, the public had the opportunity of travelling to London by a train leaving the one station at ten and another leaving the other at eleven. It was also pointed out that the companies spent large sums in canvassing traders to send their goods by their line in preference to that of a rival, and that by ceasing to canvass great economies would be effected. It was now a policy of saving expense and not of raking in increasing receipts. So we had the pooling arrangements between the London and North-Western, the Lancashire and Yorkshire, and the Midland Railway Companies in the west of England, and also similar arrangements and attempts at thorough working agreements on the part of the Great Northern, the Great Central, and the Great Eastern Railway Companies in the east of England. Whether these arrangements have inured to the benefit of the public it would be difficult to say, but their existence would seem to show that the game of railway development in this country had been played out.

But although these observations have to do with finance, they do not bear directly upon the question of accounting. During my time at the Bar I have had a good many of what are called "Rating Cases." It is quite easy to rate a house in a street, for as the basis of rating is, according to the Parochial Assessment Act, "the rent which might reasonably be expected from year to year, after making certain deductions," it is easy enough to find what rent might reasonably be expected for one of the houses in a row where all the rest of the houses with similar accommodation are let. But when you have to find out the rent, say, of sixty-eight chains of a railway running from London to York in a certain parish, when it is certain no one would ever become a tenant or pay a rent for such a snippit of railway, it is not by any means an easy matter. The rent that might reasonably be expected for these sixty-eight chains of line would depend upon what the supposed tenant—"the hypothetical tenant" he is called, and that is a household word with rating lawyers and surveyors—

could afford to pay; and what the Great Northern Railway Company who owns and works that sixty-eight chains could afford to pay depends first on the receipts from the sixty-eight chains, then the expenses incurred in earning these receipts, for the working of the locomotives, the running of their trains, etc. ; and even when by a long series of accounts you have arrived at what you call the net receipts of that little bit of line, your calculation is not half finished. In the receipts you have got the payments made in respect of the stations which were used by the passengers or goods that have passed over our sixty-eight chains, so in order to get at the net receipts of the sixty-eight chains of line you have to make a deduction for stations separately assessed. You see that at every point you have complicated questions of fact to tackle. Say, as an illustration as to expenses, you are to take the average cost of a locomotive over the whole system and apply that by chains to this line in the parish. It may be that part of the sixty-eight chains is a steep incline, like the Copul incline or the heavy gradients of Shap Fell ; would the engine mile not cost more there ?

Or say with regard to carriage expenses. The average includes the expense of running heavy and expensive dining, luncheon, and sleeping cars. Suppose the sixty-eight chains is on a branch where none of these luxuries are provided. If you deducted the average expense you would be doing an injustice to the parish. But if after all these and a dozen other accounting difficulties you have got the line net receipts of this sixty-eight chains, you are not by any means at the rent that the tenant would give for it. A tenant would not be satisfied merely to pay his way ; he would want interest on the money that is invested in what is called " tenants' capital "—the engines, the carriages, the trucks, the horses, the lamps, the uniforms, the furniture at the stations, the clocks and watches, and all the rest of it, for in the case of a great railway these matters have cost millions of money, and in order to arrive at the interest you have first to get at the value of all this tenants' capital.

And even then he would as railway cases show require a percentage on the capital for profits, and also something to cover risks, such as those of a great railway accident, the falling-off of receipts, and the like.

Now this matter of accountancy has been one of the most fertile sources of tedious litigation which has taken place over railway rating cases, and also in others where the rateable value of gas-works, water-works, tramways, and the like was in question.

In old days the railway companies used to claim and get 20 per cent. on the value, the depreciated or present value of the stock, etc., in which their capital was invested for interest, profit and insurance. In more recent times it went down to $17\frac{1}{2}$ per cent., which was sometimes divided into 5 per cent. for interest, 10 per cent. for profit, and $2\frac{1}{2}$ per cent. for risks; but in some of the most recent cases even a lower percentage has been allowed by assessing tribunals.

On this point all sorts of expert evidence is called. In such cases I have seen and either examined or cross-examined Sir William Plender, Sir William Peate, Mr. Pixley, Mr. Cash, Mr. Keen, and other famous accountants. I have seen business men called to say that 10 per cent. was an adequate return for an investment of capital in rolling stock; and in all these cases it is obvious that a knowledge of accounts is a very valuable equipment for an examining or cross-examining counsel.

Only one word more about the rating case, and then I hope to have done with rating for ever, and to part with my old friend the "hypothetical tenant." When the $17\frac{1}{2}$ per cent. has been deducted from the net receipts you have now got at the rent which the tenant could afford to pay for the sixty-eight chains, but the Act says that it is subject to deductions before you get at the rateable value, which is your ultimate goal. The amount which has to be spent on the repairs and renewals of the permanent way, the bridges, fences, and any other expenses which are necessary to maintain the hereditament in a condition to command the

rent, have to be deducted, and these are called "statutables." Here again you have a congenial field for experts on permanent way who have to guide the Court as to the "life" of rails, chains, sleepers, and fish-plates, and all the other parts of the line; for the sinking fund for the renewal of these depends, of course, for its amount upon the time that these will last before they go to that bourn from which none of these things so useful to travellers return—the scrap-heap. In all such cases one is up to one's neck in figures, and I assure you without some experience as a thread it is difficult enough to find your way out of these labyrinths of arithmetic.

I have only given one illustration of the elaborate questions of account which are involved in some of these cases, but there are very few where questions of account do not crop up.

Thus in an arbitration to determine the value of a business, or to ascertain the maintainable profits of a gas or water undertaking which is being taken over by a Corporation or Urban District Council, or to financially adjust matters between a county and a borough when there has been an extension of the latter so as to take a bite out of the county—all these and many others turn on a pivot of figures.

In a case which was heard at Dorchester as to the rating of a section of the London and South-Western Railway, Mr. E. J. Castle, K.C., who had at one time a considerable practice in that class of cases, appeared for the rating authority with another "silk," who was very unlike his leader. Mr. Castle was heavy and a little clumsy, like a sledge-hammer; his junior was quick and deft as a sewing-machine; but perhaps the contrast was fairly brought out by the leader on the other side, who began his reply with, "You have heard the solid and stolid speech of Mr. Castle and the fluent and flippant speech of my learned friend who summed up," and he seemed quite pleased with his alliterative abuse.

It was in another case for the London and South-Western Railway Company, when the rating of the whole

of the docks at Southampton was in question, that I appeared with my friend Mr. Walter Ryde for the Railway Company, and Mr. Dankwerts appeared for the assessment authority. It came before the Recorder, Mr. Temple Cooke, who, to meet our convenience, sat at the Surveyors' Institution. There was always a good deal of blistering matter in the way Dankwerts conducted his cases, but we got through four or five days without any serious rupture. Then something I said upset his temporary placidity, and he said that I was wrong and if he had me outside he could convince me of it. As I had no desire to submit the question to the "ordeal of battle"—for I remembered that the art of war is being two to one, and the art of peace knowing when you are one to two, and Dankwerts would have made two of me—I let the jibe pass. But shortly afterwards he took out a knife with a very long blade and began to manœuvre his nails, which was, to say the least of it, not the best taste in the arbitration room, so I said to the Recorder, "Sir, a few moments ago Mr. Dankwerts threatened me with personal violence. Now he menaces me with cold steel."

He pocketed his knife.

There is another point of accountancy which has some interest as a matter of principle. The policy of Parliament has been to discourage local authorities accumulating large debts and leaving these to be a burden on those who are to come into the ratepayers' pinching shoes hereafter. They have therefore, when municipalities and other such public bodies have made a purchase or speculated in some such undertaking as an electric generating station, or tramways, or undertakings of that sort, made them put away a sinking fund which is intended to replace the capital at the end of a certain number of years, varying according to the nature of the investment from fifteen to sixty or seventy years. That provision makes the ratepayers of the years during which the sinking fund has to be set aside pay for the capital cost of the undertaking, and at the end of the period fixed by the Act of Parliament or by Provisional Order the ratepayers

of that day will be the heirs to the works in question and will no longer have to pay interest on borrowed money or contribute to the sinking fund, for the whole capital sum spent on the undertaking will have been met by the accumulated fund in question. It is quite possible that the ratepayers of that happy period at that distant date will have other heavy burdens of their own to bear. But it is here, and very often with regard to electrical undertakings, that a nice question has arisen. All works and all buildings depreciate. Some seem to have a galloping consumption. Some can go on for their three score and ten years; but the moving plant of a generating station not only wears out rapidly but is liable to another disease called "obsolescence." Now it is obvious that the revenue account of your generating station is being starved unless it is being debited with a proper annual amount for the decay and depreciation which is going on.

Now some ingenious gentlemen have argued that in the case of a corporate body an allowance for depreciation is unnecessary, for as they say, in their case, unlike that of an ordinary company, there is the sinking fund paying off the whole of the capital cost during the supposed life of the station. It is a fallacy which most of us at the Bar have had to expose, a bad coin which had to be nailed to the counter. It is evident that if depreciation is not provided for out of revenue at some future time the works will be absolutely of no value, and instead of the sinking fund provision handing over to posterity an undertaking of the full initial value and the capital moneys represented by the first investment, it will hand over the money, and works consisting of worthless rubbish, and posterity will have to spend all the money in rehabilitating the works. But I have no doubt this argument will come up again, for fallacies are hard to scotch.

CHAPTER XII

SOME OTHER MEN

Other Notable Persons Besides Lawyers—Thomas Aird, Author of the *Devil's Dream*—Thomas Carlyle and his Nephew "Prince Aitken"—First Time I Saw Carlyle—The Shell of the Tragedy—Dr. John Carlyle—Carlyle's Philosophy According to Aird—Carlyle as a Boy and Young Man—My Novel and Carlyle's Comment—Waiting for a Bus—Into Eternity—Lord Young, a Successful Lawyer—When I was Introduced to Him—The Dinner in Moray Place—A Member of English Bar and Bench—His Conversation with the Poet Laureate—Hubert von Herkomer—Sir George Reid, President of Royal Scotch Academy—Sir Thomas Chambers, Recorder of London—Sir John Lubbock (Lord Avebury)—Mr. Gully (Lord Selby)—Canon Ainger, Master of the Temple—Sir Frank Lockwood—Sir A. Bosanquet.

I HAVE mentioned in these pages a great many lawyers, as if there were no other people in the world notable enough for a reminiscence. But of course that is not so, and is indeed very far from the truth. It is not because all my respect and admiration is for these, but that in the "trivial round and common task" of professional work I have been brought more constantly into contact with these, and the rubbing together even of dry sticks of lawyers may result, and has resulted, in fire and light. But I have recollections of many men, thank goodness! who were not lawyers, and some of these may, in Dr. Johnson's words, be worth "writing down."

Thomas Aird, for instance—a tall, slow, gentle man on whose rugged face there came a pleasant smile, like sunshine upon grass—was a minor poet whose works never became popular. He lived a quiet old bachelor life in a house over-

looking at a distance a churchyard, and dabbled in literature and in the editing of a provincial newspaper. At Edinburgh University he made Carlyle's acquaintance, and when tutor in a family in Selkirkshire met Hogg, the Ettrick shepherd, often. He had been intended for the Church, but he was too big a man for a vestry. His *Devil's Dream* is an exceedingly fine poem, and he lived a poetic life, mostly in blank verse. He edited a local newspaper from 1835 to 1863 and also an edition of the selected poems of David Moir (Delta). I used to visit him often and listen to his temperate speech when I was a young man, and I have the same respect for his memory—quite a fragrant one—that I had for him. There is many a "gem of purest ray serene" in the quiet caverns of country life.

Some of my recollections of Carlyle are connected in memory with Thomas Aird. Carlyle was the son of a stonemason and was born at Ecclefechan, a village in Dumfriesshire which has the advantage of a "burn" down its street into which the somewhat slovenly Scots used to put all their refuse, believing unduly in the water-carriage of insanitary deposits. As he was a Dumfriesshire man—I was born within ten miles of Ecclefechan and about a mile from the bald-headed "mausoleum" as it is called, which covers the ashes of Burns—I felt distantly connected with greatness. I knew, too, several of Carlyle's relations by sight, and I was proud of the resounding reputation he had made for himself by the graphic words in which he advocated silence. One of his relations was at school with me and was the son of Carlyle's sister, Mrs. Aitken, called by him "the craw," for when young she had black hair. The nephew was called Prince Aitken, but why I never knew. I do not remember that he was remarkable for his "book learning," but at "leap-frog," or, as a somewhat similar game was called, at French fly (or flee), he was transcendent. In those early days I am not certain that I did not think more of "Prince Aitken" and his accomplishments than of the author of *Sartor Resartus* and his fame.

The first time I think I saw Thomas Carlyle with his

then bent back and rugged, gnarled face, where care with its sharp tool had carved deep lines, as it does the faces of men who really meet the troubles of the world and by opposing end them, was in the Kirkgate of Dumfries. The Kirkgate takes its name from St. Michael's Church or the "Old Kirk," and it is in the graveyard behind the Kirk, in the shower and shine of that fickle climate, that the "mausoleum" stands which marks with its ungainly presence the place where rests the fiery clay of which Robert Burns was composed. I had been to see Thomas Aird in his house above the river Nith, with its windows looking over the river to the Troqueer churchyard, and he had offered to show me the exact place where the monastery church of the Grey Friars had stood. It was in that church that the Bruce had stabbed the Comyn; and there where Bruce, with blood on his hands and on his conscience, when leaving the church met Kirkpatrick, who in answer to Bruce's words, "I fear I have killed the Comyn," used the memorable phrase, which sticks out of history, "I'll mak' siccer," and went in and with murderous stroke "made sure."

We were then walking up the Kirkgate towards the site of that red history when we saw two old men before us. Both were burdened with years. They were Thomas Carlyle and his brother, Dr. John Carlyle, who had lived for many years in Rome and made a good translation of some of the cantos of the *Inferno*. They walked on slowly in front of us past the old churchyard which frowns upon you from its monuments with skulls and crossbones as you go up the street, until they came to a narrow street which runs out of the Kirkgate, which is called "Burns Street." It was in this street—almost a slum—that Burns had lived, and it was in honour of the poet that an appreciating Town Council called the mean street after him when he was dead, for whom they had done nothing in his "ranting, roaring" life. Here Carlyle and his brother stopped opposite the house in which Burns had lived and died, and as we saw them pause Aird said,

"There they are looking at the shell of the tragedy."

While I am speaking about Carlyle and Aird I may as well remember some things that Aird said about his friend.

"What do you think of Carlyle's philosophy?" he asked, after praising him as a poet, although he was only an occasional writer of verse. "Doesn't it just come to this, that he is all in praise of sincerity and work, in deadly antagonism to the lie and those who are 'hand idle,' preserve game, and 'bush' fields? But hasn't he been anticipated? There is a text in the Bible which contained it all—and it is, 'Diligent in business, fervent in spirit, serving the Lord.' The diligent in business is Carlyle's 'work,' the fervent in spirit is his sincerity, but in his creed he has left out serving the Lord."

Once, too, he gave me an illustration of Carlyle's picturesque method. Perhaps in his seclusion he was gently jealous. This, as far as I can remember it, is :

"Jockie and Jenny had been keeping company, but no word of love had as yet been spoken. Jockie, however, goes to the fair and brings home to Jenny a bright ribbon, it may be to tie up her bonny brown hair. And it was all from that blue 'fairing,' ye gods! that in due time a human soul was launched upon this world—or at any rate put on the 'stocks' of this world, from which in time it would be launched on eternity. You see what a knot of ribbon, rightly handled, can in God's time accomplish."

It was from Aird, too, that I heard two stories of Carlyle's early days, which so far as I know are not in print. Once when he was a boy he had been brought to Dumfries by his mother on a market-day, and she lost him. A greater than he had rebuked His mother when He too was truant from the apron-string, by saying, "Wist ye not that I must be about My Father's business?" And Carlyle, too, although he had run away, was on business, and was found in the old kirkyard beside the grave of that other great Scotchman, Burns.

Once, too, on the occasion of a public dinner which was given to Allan Cunningham in Dumfries, Carlyle, then a young man, was present and had to propose some toast or



HERBERT SAUNDERS, ESQ., K.C.

make some speech. When he rose to his feet he said, "Gentlemen, I don't know that I'll get it out, but I have it in me." And he had it in him and got it out in after years in the thirty-five volumes of his works.

In 1870 I published a book—a novel. It was accepted by Messrs. Chapman and Hall at a time that George Meredith was their reader, and published by them on what was called the "half-profit principle." I hope Messrs. Chapman and Hall have had their half. I sent a copy of the book to Carlyle, and he wrote me by the hand of his niece Mary Carlyle Aitken a very nice letter, and told me that he had found a good deal of talent in the book and would willingly accept the dedication of my next novel, but he advised me to devote myself to real work.

Well, I have, although reluctantly, taken his advice.

The last time I saw him was at Charing Cross, where he was standing on the pavement waiting for a Chelsea bus, and so he passed out of my ken. "Adieu, Thomas Carlyle," as he himself said to Walter Scott, "pride of all Scotchmen, take our proud, sad farewell."

While I am speaking of Scotchmen let me remember George Young (Lord Young). He was the son of a Procurator Fiscal in Dumfries, and being a resolute sort of youth went to the Scotch Bar, and there he wrestled himself into quite a commanding position. He was Solicitor-General for Scotland and afterwards Lord Advocate.

There is much luck in the gamble at the Bar. Had any of the more desirable offices like that of the Lord Justice General or the Lord Justice Clerk fallen vacant while Young was still a law officer he would, of course, have been appointed. But no such opening offered itself in time. I suppose his practice, which was at one time very large, had fallen off, for ultimately he was appointed an ordinary Lord of Session or Lord Ordinary. I remember my first meeting with him. I was taken up to the Parliament House in Edinburgh to be introduced to the great man. He was above middle height and had somewhat shrewd features under his wig, which sat a little crooked. He was at that

time Solicitor-General. I was introduced to him as a youth who, like himself, was ambitious, and he gave me a full minute of his valuable time. I remember, too, he was kind enough to say that I must come and dine with him in Moray Place, where, by the way, one of the large houses was not big enough for him, for he had thrown two houses into a sort of palace. Then he said,

"Let me see, what night?"

That, I thought, was coming to business, but he added, after thinking for a second, "Well, I'll write to you and fix a night."

Well, that night has not come yet, but that dinner which I never had has a firmer place in my memory than a hundred dinner-parties I have enjoyed. That was the first time I met Lord Young. Years after, when we were both Benchers of the Middle Temple, it was *he* that asked me to do *him* a favour. He was a member of the Government at the same time as Lord Coleridge, then Sir John Coleridge, and it was no doubt on his suggestion that Mr. Young joined the English Bar, and through his influence that he was made a Bencher of the Middle Temple. He frequently, when in London, dined in Hall, and I met him there upon many occasions. As a judge he was said not to be very successful, and certainly many of his decisions were reversed; but as a rough humorist and raconteur of some excellent Scotch stories he certainly was a unique addition to the Bench.

On one occasion at Grand Day dinner the Poet Laureate, Alfred Austin, was one of the guests, and walked up the Hall with and sat beside Lord Young. When they were seated at the table above the dais Lord Young said to the small man,

"You'll be a lawyer like all the rest?"

"No," said Sir Alfred, "I am a poet."

"A poet?" said Lord Young. "Do you make a living by it?"

"Yes," said the Laureate; "I keep the wolf from the door."

"What, by reading your poems to him?" said Young

It was said that on another occasion Sir Alfred met with even a ruder conversationist.

He was describing how in Switzerland, on one of the passes, he had found two ladies in some footsore distress, and how he assisted them. When they came to the inn he left them, but very soon they sought him out with grateful enthusiasm and told him that they had had no idea that he was the great Sir Alfred Austin.

"And were you?" asked the gentleman to whom he was telling the story.

There was a proposal to make a railway which was, I think, to terminate near Watford, but it was to pass very near to Lululand, Herkomer's house at Bushey, where he had settled and founded his art school. He opposed the Bill and I appeared in support of his petition. He naturally wanted to protect his house, which was a sort of museum of the patient art of "the Herkomers" in wood and other materials. It was, in fact, an art treasure as well as a house; and I am glad to say we were successful and that the Bill was rejected. He came to consultation, and was a spare man with a narrow face of a dirty colour and with lank hair parted in the middle. As a portrait-painter Hubert von Herkomer was great. He painted a portrait of Samuel Pope, K.C., and put his round face into his picture of the old pensioners at the Charterhouse Chapel.

I knew another great portrait-painter, Sir George Reid, well. He was, I am convinced, the greatest portrait-painter that Scotland has produced since Sir Henry Raeburn ran Reynolds and Gainsborough and Romney so close. I forget how I first came to know Sir George, but it was quite a long time ago that when he was up in town, from Aberdeen, during the Royal Academy Exhibition—I think it was the year in which his calm landscape, "The Gorse in Bloom," was exhibited—he came to see me. He was, I believe, at the time the guest of Tom Taylor, who did the Academy articles for the *Times*, at Lavender Sweep, and I thought I saw the influence of Reid's conversation in Taylor's articles, but that may be a fanciful criticism. All that I remember of

that call is that the man interested me, and a little joke he made or retailed, I do not know which. While speaking of Hook, the great salt seascape artist, he said, "Oh yes, Hook and I (eye) are old friends."

I came long afterwards to know him better, for he painted a portrait of me which was exhibited somewhere. It was painted under some difficulties, for I was very busy at the time and found it difficult to give him the necessary sittings. I generally had to go to his studio in Bayswater—which belonged to an artist friend, but which Sir George Reid was occupying that summer—after a hard day's work at Westminster, and in the portrait I think he has with painful artistic veracity got the tired look in my face, and even the reddish mark on my nose where the pince-nez had been riding stride-legs all day. But although I may have been tired the sittings always amused me. Sir George was an interesting man, had a memory for good stories, and was, during the hour or so that I sat there, "delightful company." He had seen much, known many, and recounted well.

I once had an arbitration before Sir Thomas Chambers, the Recorder of London. It was a little out of my line. It arose out of a dispute between two medical men who had entered into a partnership in haste and repented at leisure. I think the practice was somewhere in Islington, and although one of the medical gentlemen, my client, had paid a sum down for a share of the practice, it turned out to be not at all what it had been represented, and they had agreed to break the bonds on terms to be determined by arbitration. We sat for two or three days in Sir Thomas's chambers in the Temple, and the windows were in a dirty conspiracy with the leaden skies to make the room dark. The books, too, had a look as if they were not gilt-edged securities and had thick drifts of dust on their upper edges. Perhaps he neglected his library when he got his office. He had been Common Sergeant, and some evilly disposed person had put a "very" before the Common; but that criticism must in his case have been outrageous, for from that

step to the throne he ascended the throne itself and became Recorder of London with a salary of £4,000 a year. He was not a big man, indeed he was under middle height, with an apple-rosy face and Victorian side-whiskers.

He was a friendly sort of man and addicted to jokes. In the arbitration I mentioned there was some question raised as to "goodwill" as an asset in the business of doctoring. Goodwill in such a case is not used in the same sense as in the Christmas hymn, but means the established custom or popularity of a trade or business. Sir Thomas, in his nice little jocular way, illustrated it by saying,

"Of course if a doctor has taken off one leg you will want him to take off the other."

Great anatomists can from a single bone of an animal tell you exactly what it was like when it walked the earth; and so from such a little funny-bone of conversation you get to understand Sir Thomas Chambers.

Once at Rottingdean, where he was spending with his family a long vacation in close proximity to a well-known family who were noted for their large, almost enormous, proportions, Sir Thomas said that when they went to bathe, or bulge the ocean, "they went down fat and came up dripping." Several years after the arbitration which put asunder these two doctors whom the devil had joined together, and some years after I had dined with the Recorder in Gloucester Place, I met Sir Thomas Chambers again, and with unpardonable forgetfulness I asked how Lady Chambers was. He answered, "Dead," and there was just the littlest twinkle in his eye, which, of course, was due to my gaucherie and not to any scintillation of humour in connection with that more serious dissolution of partnership.

Sir John Lubbock (afterwards Lord Avebury) was a man who was interested in many things. He was a banker, a county councillor, a member of Parliament. He not only knew the hundred best books, but he knew in a minute way all about bees and ants and their inspired instincts. He also wrote a book on Municipal and National Trading, in which he was polite enough to quote with approval from

some speeches of mine; and he gave evidence before Lord Llandaff's Commission on London Water Supply against the proposal that the water companies should be bought up, and tried to show that it would be disadvantageous to the ratepayers—an opinion that the ratepayers have been able poignantly to verify since the existence of the Metropolitan Water Board. If I remember aright, he suggested that there should be directors appointed by the public or in the interests of the public who should sit upon the Board of the then existing water companies—a quite mistaken remedy for the grievances complained of, it seems to me. I used to meet him as a manager of the Royal Institution, and still had the impression that he was full of a kind of scientific curiosity, but that he was a man rather of a finicking mind than of great mental grasp.

I have incidentally referred to some speech of mine on municipal trading. Once in 1908 I was asked to address certain law students and actuaries in Glasgow, and took as my subject "The Economics of Socialism." I believe the thing had such a success that after delivery it was reproduced in print for one penny by some anti-socialist society or league. I have not refreshed my memory as to my exposure of the economic fallacies which undermine socialism, but as it was popular with those who were against this state ownership of all the means of exchange, production, and distribution, no doubt it gave offence to those who held that a new heaven and a new earth were to be achieved by establishing hell—so much so that a friend said to me,

"Don't go to Glasgow again. If you do the Socialists will eat you."

"Even in that case," I said, "I would disagree with them."

There is no joke under the sun that is new, and I had probably been forestalled in this mild excursion into humour a hundred times and possibly a thousand years before. But one thing occurs to me with reference to lawyers' jokes, and that is that quite small jokes go well in solemn surroundings, and that is why there is more laughter in

Court over a cripple witticism than would welcome it elsewhere. A cracker is quite loud when it invades a brooding silence. I remember an old Scotchman—who, by the way, had translated some of the New Testament into Scotch for some great patron in France, of which I only remember a few words, but he rendered "he had compassion on the people" well enough by the words "he was wae for the folk—" well, he once told me that as a boy he was with the rest of the household at "family worship" and the cat came into the room. That circumstance seemed to the boy so incomparably funny that he would have laughed outright had he not, so he told me, thought of Hell, and that prevented the explosion of mirth. There is some thought necessary in Courts and other places of solemn surroundings to prevent the glee with which even the smallest contribution to hilarity is greeted.

Gully, afterwards Speaker of the House of Commons and ultimately Lord Selby, was never, although a delightful man, a stiff advocate. I was opposed to him in some compensation cases, and I did not come to the conclusion that he was a very redoubtable antagonist. I also had him as sole arbitrator in one or two long cases, and I thought that in every respect he made a most excellent and patient judge. He suffered and yet he gained by reason of the fact that he sat in the House of Commons for Carlisle, which was a very rickety and unsafe seat. It was said that it was due to that fact that Gully never got a judgeship, which he deserved, and it was because he did not get his deserts in the direction of the Bench that he came to be accepted as Speaker of the House of Commons. We know how going from bad to worse is sometimes spoken of as getting out of the frying-pan into the fire, but it is not often you get out of the fire of politics into the frying-pan of office, where you can stew quietly in your juice. I question now whether he was as successful a Speaker as he would have been a judge, but he was, anywhere and always, a pleasant and delightful man.

At first the Reader and afterwards "the Master" of the Temple in succession to Dr. Vaughan, Canon Ainger was a

man that it was good to know and pleasant to remember—a little man with a whitey-brown face and a fleece of white silky hair. We all knew him as the lover and the gentle student of that gentle humorist Charles Lamb. There was great fitness in this connection between the editor and the edited, for Charles Lamb was born in Crown Office Row; and one of the nicest, where all are nice, of the Essays of Elia was on *Some Old Benchers of the Temple*, and Ainger was connected with the two Inns of Court the whole of his ecclesiastical life. I saw a good deal of Ainger, for he dined very often with the Masters of the Bench of the Middle Temple on Sunday, and he once paid me a visit of about a week in Scotland. When with us in Kirkcudbrightshire it happened one day (an exception, of course, to our climate) to be wet. A walk had been spoken of, and the Canon, notwithstanding the glum weather, proposed to go.

"'Tis better," he said, "to have walked and got wet than never to have walked at all."

He was not only a pleasant man but a man of pleasantries. His life has been written, and although it was a life which was remarkable rather for its lack of public incidents it was a life well worth the record which has been made of it. He was unpretentious but bright, with an excellent memory for what was good, and a pleasant voice, which did not sermonise even in the pulpit. The stories that could be told about him are, I have no doubt, many; I only remember a few of these, although I remember the man well. I remember his once quoting the line,

" She wore a wreath of roses,"

and adding,

" Yes, and if Rose catches her at it again she'll let the sawdust out of her."

But it sounds more like a quotation from the *Pink 'un* than one of Ainger's own.

There was, he told us, once a student at Cambridge who said to him that his tutor used a translation, whereupon Ainger said, " Ah, I see the ass knoweth his master's crib."

There is another story which he told which has stuck in my memory. A would-be customer at a country bookshop asked if they had a copy of Browning.

"We don't keep him," answered the shopman. "We don't understand him."

"Have you Praed?" asked the customer.

"That would do no good," said the shopman, who saw the futility of intercession.

Ainger indulged, notwithstanding Dr. Johnson's opinion of a man who makes a pun, in some elaborate play upon words. "The gardener," he said, "minds his peas; the billiard player his cues; the gentleman his p's and q's; and the cathedral verger his pews and keys."

I think it was Ainger who told me of a lady who, after a conversation with, I suppose, a distinguished scientist, said, "Mr. Blank is so amusing; he has been trying to make out that we are all descended from Darwin."

But there is quite an authentic story of a lady who said to Dr. Ball that she was sorry she had been unable to be at his lecture on sun-spots, for she freckled so.

One lady asked the Canon what he thought about Bimetalism—it is the sort of question women like to put. But he answered, "All that I know about Bimetallism is that silver and gold have I none."

The story of his arriving at a house where he thought the evening party and Christmas-tree was going on, and dropping on his knees before the drawing-room door was opened and making his advent as a kind of grizzly bear roaring—and being ushered in, not to a children's party but to some twelve or fourteen stodgy grown-ups, who had just come up from a long and tedious dinner, is no doubt true. He had mistaken the number of the house of his friend with the Christmas-tree, and found himself next door.

But one remembers him, as I say, not by these but by his gentle, playful, manly nature. He was a good man and the world lost something valuable by his death.

Sir Frank Lockwood was a big, burly, healthy, nice-complexioned man who remained a boy long after the years

of discretion. He was full of animal spirits and was guilty even of practical jokes. But his fame rests on his fingers. He was not a great artist in black and white like Charles Keene or Phil May, but he was quite a good caricaturist. He caught a likeness with some deftness, but his drawing was far from accurate. I was only once with him in a case and I remember it with pleasure. A contractor for a railway into York had a large yard close to the North-Eastern Railway line, and he tried to turn the yard into a station and claimed to have the terminals—that is, the payments made for the use of the station—out of the rates. The matter was one of importance to the Railway Company, for if the particular individual could create a station in his private hands on a railway line other people could do the same, and in that way railway companies would be deprived of a great part of their present revenue. The same thing had been done at Preston, where a Mrs. Tomlinson owned a siding over which she sought to convey the goods of various manufacturers to the railway and demanded from the London and North-Western Railway Company a rebate out of the rates.

I am not certain how the case at York arose, whether it was the acquisition by the North-Eastern Railway Company of the yard he had—the value of which he claimed to be enhanced by the terminals—or whether it was a claim upon his part to be allowed the terminals, as in the Tomlinson case, out of the rates. The matter, however, whatever it was, went to arbitration, and Lockwood and a junior were briefed for the North-Eastern Railway Company. The hearing began at York, but was adjourned to the Surveyors' Institution in London, and on the adjourned hearing the Railway Company briefed me because they thought, perhaps quite erroneously, that I knew more about railways and terminals than Lockwood did. It might by a jealous man—which Lockwood was not—have been thought a slur to take in another counsel at that stage; but he welcomed me to the team and said he was delighted to have such help as I could give him. I cross-

examined various witnesses for him, and when the time came for reply I suggested that he should, as leader, make the speech. But he refused and insisted that I should let off the fireworks. But what was very nice of him was that instead of absenting himself from the room, as most leaders would have done with the plausible excuse of attending to another case somewhere else, he sat there during the whole of my reply; and as it was just at the time of Mr. Gladstone's retirement from public life, he made a sketch of the grand old man walking along a road with a signpost on it indicating the way to Hawarden, and underneath the sketch he wrote,

" There's nae luck about the House,
There's nae luck ava ;
There's little pleasure in the House
Now the old man's awa."

I believe he intended the sketch for me, but it fell into the hands of Sir Alfred Butterworth and I have no doubt he has it still.

There are many good stories about Lockwood, and Lockwood and Waddy, but as they have been going the rounds for many years I will give them a rest by not repeating them here. All chestnuts should be eaten with butter—or old jokes should have a Greenwich Hospital provided for their old age. When I was over in Dublin once on professional work I saw in the *Irish Times* that an old woman who had been before the magistrates seventy-eight times for being drunk and disorderly suggested to the Bench that she should now be superannuated. Old jokes deserve the pension of silence. There is one story, however, about Lockwood where the wit was not his but another's, and although I hesitate, because the humorist is still living, I will break my rule and here it is.

Upon one occasion Lockwood said to Sir A. Bosanquet, now the Common Sergeant and a most excellent criminal judge, "Bosanquet, I believe you are the dumbest man at the Bar." And the Common Sergeant said, "Have you considered the claims of Gainsford Bruce?" which answer certainly refuted the suggestion in the question.

But Sir A. Bosanquet, although he looks solemn—and that is quite useful on the Bench—is very far from dull. I have heard him make a most humorous speech at a City dinner; and I know from my experience of him as arbitrator in a long rating arbitration as to the value of York station that while he indulged in some brilliant passages of silence he also enlivened the proceedings with an occasional observation which stung as pleasantly as a glass of Clicquot *extra sec.*

CHAPTER XIII

SUGGESTED ALTERATIONS IN PRIVATE BILL PROCEDURE

Parliamentary Bar—Under Sentence of Death—Members of Parliament Overworked in Busy Sessions—Good Work in Committees, but not Reported—Committee of Investigation, 1863—Joint Select Committee, 1869—Mr. Dodson's Resolutions in House—Provisional Order System—Tribunal of Judicial Character—Not Desired—Sir Theodore Martin and Mr. Leeman—Sir William Harcourt and Mr. Chichester Fortescue on—The Court of Referees—Mr. Robert Lowe's Proposal—Sir Edmund Beckett on—*Saturday Review* on—A Second Inquiry in Case of Private Bills—Sir William Harcourt on—Frequently Second Inquiry has remedied Injustice Done in First House—London, Tilbury and Southend Railway Case—Ashington Urban District Bill.

THREATENED men live long, and institutions over which the Damocles sword has been hanging by a thread for years continue in existence and flourish like a green bay-tree. Ever since I have been at the Parliamentary Bar its existence as an institution has, as it were, been under sentence of death. There have indeed been various attempts to alter the whole system of Private Bill legislation, and many of these looked ominous at the time.

The work of members on Committee in a busy session takes up a good deal of the time of members, and at the time, when Parliament had not only to do the ordinary work of legislation but also to overcome the stiff inertia of obstruction, some rather vigorous attempts were made to relieve the members of their duties in relation to Private Bills, which, however useful they may be to the community, were not very advertising to the members who sat

on the Committees. Members of Parliament naturally prefer the work of the House itself, which can be reported in the local papers which circulate amongst their constituents; they like to be constantly in the public eye, even if the eye twinkles with smiles at their speeches. These attempted alterations, while they have given satisfaction to members of Parliament, made members of the Parliamentary Bar quake in their shoes.

A Committee investigated the question in 1863. Even then it was argued that the system of Private Bill legislation was unsatisfactory, and principally on the ground of the great costliness of the proceedings before Committees of Parliament. The Committee of Investigation of that year, after careful inquiry, reported that no Court of Inquiry which could be devised would be so satisfactory to the public as Committees composed of members of *both* Houses of Parliament. The knees of the members of the Parliamentary Bar knocked together! But still nothing came of the recommendation. Again the matter was considered by a joint Committee of the two Houses in 1869, and the result of their investigation was a recommendation that Bills, instead of being submitted to Committees of each House separately, should be referred to a joint select Committee composed of members of both Houses. This recommendation seemed to be viewed with favour by Mr. Gladstone's Government in 1872, for then the question was again brought under the notice of Parliament by Mr. Dodson, at that time the Chairman of Ways and Means and afterwards President of the Local Government Board. It is to be noted, however, that the proposal then made by Mr. Dodson, which was, to all intents and purposes, on the lines of the recommendation of the Committee of 1869, was not approved by Sir William Harcourt, who was at that time, or soon after, Home Secretary, and who had at one time enjoyed a large practice at the Parliamentary Bar. Mr. Dodson's resolutions were to the effect that the House was of opinion that the present system of Private Bill legislation requires reform; that it is expedient to substitute an

improved and extended system of provisional orders for local and personal Bills ; that the provisional order should be decided on by a permanent tribunal of a judicial character ; and that there should only be an appeal to Parliament from that tribunal by consent of Parliament, and that the appeal should be referred to a joint Committee.

This was the suggestion, and on the whole it was not a wise one. *First*, it appeared that according to those persons concerned the existing system did not require reform, for Sir Theodore Martin in a pamphlet said that " having been brought into intimate contact with great municipal and commercial bodies who either promote or oppose the bulk of Private Bills, he could say with some authority that the agitation was not due to their dissatisfaction." Mr. Lee-man, Chairman of the North-Eastern Railway Company, bore his testimony in the House to the satisfaction which was felt by the railway world in the existing system ; and Lord Bury in the same debate spoke in the same way.

Secondly, the notion of a " permanent tribunal of a judicial character " was a mistake. The questions submitted to Private Bill Committees are not questions of law which are to be determined by judges, but questions of common sense and expediency ; and gentlemen able to act upon such considerations are not infrequently found in the House of Lords, and are not even exceptions in the House of Commons. Mr. Chichester Fortescue, President of the Board of Trade (afterwards Lord Carlingford), said, " His honourable friend said that the decisions of the present tribunal were unsatisfactory, but the parties concerned in these decisions had great faith in its uprightness and impartiality, and whether as much could be said for the tribunal which it was proposed to substitute was, he could not help thinking, rather doubtful. It did not appear to him, he must confess, that a satisfactory plan had as yet been submitted to the House for the creation of such a tribunal," and Mr. Gathorne Hardy (afterwards the first Lord Cranbrooke) in the same debate, said, " that questions of such enormous importance ought never to be delegated to any body of men outside the House,

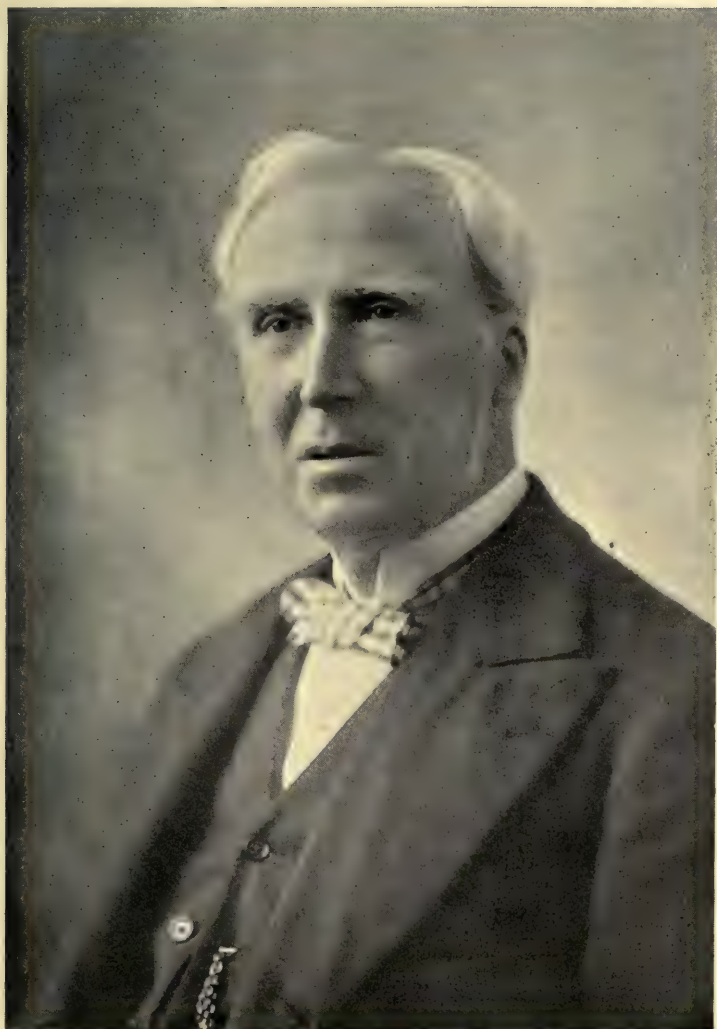
however learned and judicious they might be." There were, too, at the time certain newspapers which protested against the decentralisation and delegation of parliamentary functions involved in the proposals.

But the question of the unsatisfactoriness of a permanent tribunal was not altogether a matter of surmise. Parliament had, at the indiscreet instance of Mr. Robert Lowe, experimented in that direction. The House of Commons established what was called the Court of Referees. At first that Court, upon which there were two or three paid members who could give advice but not vote, had to enquire into the engineering details and estimates of the various schemes brought before Parliament, and worked so badly and increased the cost of litigation to such an extent that its functions were soon restricted to determining the question of the right of petitioners to be heard on their petitions.

Writing to the *Times* in 1872 Sir Edmund Beckett said of this Court, "I have no hesitation in saying after eight years' trial that the Court of Referees has become a nuisance to the suitors and the laughing-stock of the profession," and a writer in the *Saturday Review* said, "Many practitioners at first approved of the reference of the question of *locus standi* to a separate tribunal, but experience has led to an almost unanimous condemnation of the present practice."

The Court of Referees still exists. The paid members are no longer there, or at any rate only one of them; the Speaker's counsel is a member of the Court. They have accumulated in all these years a mass of decisions which are contained in many volumes of "Reports," and in these volumes the decisions are as conflicting as Kilkenny cats. You can with diligence find decisions to support any proposition, however outrageous, as to the rights of persons to be heard against Private Bills, and naturally the current decisions of the tribunal come to be very much of a "toss-up."

But there was a third fallacy involved in Mr. Dodson's proposal, the one hearing before a joint committee instead of the two separate hearings. On this Sir William Harcourt



PEMBROKE SCOTT STEPHENS, ESQ., K.C.

said, "Objection had been taken to the proposal of an appeal to the House of Lords. He did not think it a bad thing." (I wonder what he would have said to the Parliament Bill.) "Over and over again he had known decisions reversed by the House of Lords, and he never recalled any in which the House of Lords was not right. That was natural, because when the case went from the House of Commons to the House of Lords and received a second hearing it came naturally to be better understood. It would be a mistake to make one standing committee which could give only one hearing, because second hearings in cases of great importance were very valuable."

And similar views were expressed by Sir Theodore Martin in his *Notes on Private Bill Legislation* (published in 1872), and by Mr. Alexander Grahame, a very experienced parliamentary agent—a man I remember in my young days, with a long body, a tall dome of a forehead, and a sort of india-rubber face, of whom Mr. Hope Scott used to say that Mr. Grahame never let him out of his sight, followed him like a dog, and went with him to bring him back to Committee, even when he went to wash his hands.

But from my own experience I can confirm what Sir William Harcourt said so long ago as 1872. It has often happened that a second hearing, whether it took place in the Lords or the Commons, has rectified the injustice done by the decision in the first. Quite recently, when the Midland Railway Company sought to amalgamate with the London, Tilbury and Southend Railway Company, and the Great Northern Railway Company petitioned against the Bill and asked Parliament if it passed the preamble to give them running powers over the Tilbury railway to the docks at Tilbury, this is what happened. The petitioning Company alleged that running powers or the right to run and pick up non-local traffic had frequently been given where an amalgamation of a company which had been independent was now going to be absorbed by a rival company. There was sense in the suggestion. While the Tilbury Company was a tub standing on its own bottom it did not matter to it

whether traffic went from the docks at Tilbury to, let us say, Leeds by the Great Northern line or the Midland. Both routes were open to the public. But when the line became part of the plant of the Midland Railway Company, part of the machinery, like the vats in Thrale's Brewery, according to Dr. Johnson, "beyond the dreams of avarice," the whole of the traffic would, of course, go by the Midland route, unless the Great Northern could get by running powers to the source of traffic. But the House of Lords passed the Bill without giving the running powers. The Committee of the Commons, however, reversed that decision, and a clause was inserted giving the running powers asked for.

So, too, in the very last session of Parliament. The Urban District of Ashington promoted a Bill for the purpose of getting a water supply from the Tossan Springs in the valley of the Cockett. It was a scheme which would have involved the ratepayers of Ashington in considerable expense and it was alleged would be an injury to the fishing in the river Cockett. The Corporation of Tynemouth also objected to the scheme, partly because it had looked forward to getting water in the future from these Tossan Springs, and further because it had sufficient water from its existing works not only for its own wants but for an ample supply to Ashington. The opposition failed in the House of Lords but succeeded in the second House (the Commons).

There was another so-called reform pointed at in Mr. Dodson's resolutions, and that was the extension and improvement of the Provisional Order System. I have, however, referred to this matter elsewhere.

I have put shortly the facts as to the way that Parliament has threatened to put an end to the present system of Private Bills legislation, and have indicated that nothing has come of the various inquiries and recommendations. Indeed, it would seem from the dearth of business at the present time that the system is going to die a natural death instead of by the hands of the common hangman—Parliament. I have not argued for or against the system. It is best, on the whole, to let sleeping dogs lie.

CHAPTER XIV

COMMITTEES AND CHAIRMEN

Sir John Kennaway as a Chairman—Two Noble Chairmen in House of Lords Committees—Confidence between Bench and Bar—Lord Esher and Counsel—What is that Red Line?—G.W.R. and M.S. & L. Line—Some Excellent Chairmen Now no More—W. E. Foster on the Ship Canal—Swing Bridges—Irish Railway Amalgamation Bills—Chairmen in Lords Committees—How Committees are Constituted—A Casting Vote—The Non-Contents Have it—Mind-tight Compartments—Counsel and Witnesses had to Stand in Lords Committees—No Adjournment for Lunch—"Week-Ends."

I SHOULD like to write about some of the Committees of Parliament and some of the Chairmen of these Committees. At the same time it seems a little mean to gird at a tribunal which may have decided against you, or to praise it because it has seen eye to eye with you in any particular matter. Someone remarked in verse, "How wise the winning suitor thinks the judge." At the same time, without mentioning any names of those who are still decorating the red benches of the Lords or the green benches of the Commons, it is impossible not to allude to the foibles of some of those who habitually preside over Committees to which important Bills are referred.

None of us can forget Sir John Kennaway, a tall man with a long beard which would have mingled harmoniously with his philabeg if he had worn one, and whose fine bald head shone like a dome of tonsured ivory. He seemed to be a little impatient of argument, if one might judge from the way that he got up from his chair and walked backwards and forwards behind the Committee, or stood at the window and looked out at the river which was still frequented by the

unfortunate London County Council's river steamboats. Barring these wild-beast antics—and I would be the last to blame him if he resented argument—he was always courteous, and so far as I can remember (I do not think my memory is too lenient), he generally decided the cases rightly. There were, too, two prominent members of the House of Lords who have left an indelible impression on the memories of most of the members of the Bar. One was big and burly, and made up his mind without any assistance from counsel and sometimes without paying undue attention to the witnesses. He generally, however, listened with patience to the opening, and even seemed to lend an ear to the first witness; but after that he was what the Americans call a "hustler." Now, however clever you are as a judge, it is a mistake not to pretend to hear what the parties have got to say. One of the best judges that I can remember on the Bench of the High Court was one who scarcely ever opened his mouth—an example which has been far from followed by many of the present loquacious ornaments of the Bench. The noble lord I am referring to very often drove like a steam-roller through the case and possibly arrived by this direct method at a right destination. But, as I say, the ordinary litigant likes not so much justice as a run for his money. A judge that walks is better than one that jumps to his conclusion.

The other noble lord that I was thinking of was as little as the other was big. He had a carping, dissatisfied face and a carping manner. He, too, was a man of decided ability, but of less temper, and he was so self-confident that he did not take notes. He was intolerant of noises, and half a dozen times a day told the policeman with nagging pertinacity to shut the door. He seemed a little suspicious that counsel were trying to take him in—which is a mistake, for my experience of counsel who practised before Committees was that very few of them would have thought that that was good advocacy. I remember I was once arguing a case against a well-known leader in the Court of Appeal when Lord Esher was Master of the Rolls. The learned gentleman was

certainly one of the cleverest men that practised at the Common Law, the Chancery, or the Patent Bar (if there is such a Bar) in my time. He was so clever and so adroit that some people thought he might have been more successful if he had been less ingenious. I remember very well, while he was arguing, the Master of the Rolls, who no doubt had a brusque, irritated manner, said to him, "Mr.—, be careful. I'll watch you."

I thought that the observation sounded more like the astute observation of a policeman than of a distinguished judge, but of course I do not know his provocation. Had the same observation been made to me—I was usually before Committees where manners are the rule—I would have answered, "If your lordship means that you will pay attention to my argument I am obliged, but if your lordship means what your lordship's words sound like I will refuse to address you further." I should then have chucked my papers on the table and left the Court. But the learned gentleman in question did not resent the observation, and went on with his ingenuity as before.

Now the small noble lord that I have been referring to had on his peevish face a sort of angry suspicion, which might have disconcerted any but those who had had long experience of chairmen of Committees. His decisions were sometimes confirmed by the Committee of the next House, but, as Mrs. Beecher Stowe said, "New England was an excellent country to emigrate from," so some of his decisions were an excellent country to emigrate from to the House of Commons. Impatience is a very dangerous quality in a judge.

There was, quite in my early days, a Chairman of a Committee to which an important Railway Bill had been referred. The proposed railway was, according to custom, indicated on the great tapestry cartoon which covered one wall of the Committee-room, by a broad red line. All the evidence had been referring to this red line; all the speeches had mentioned it again and again; a docile pointer in the hands of some engineer's assistant had traced it a dozen times on

the ample map. It was, therefore, a little disappointing both to the promoters and to the opponents when on the third day of the inquiry the noble Chairman, with quite an interested air, asked, "What is that red line on the map?"

I do not quote that as an instance of impatience.

The two sudden noble lords I have been referring to were quite on a different plane of intelligence from the backwoods'-man who wanted to know what the red line was.

Once there was a cartoon up with "G.W.R." in enormous letters on it—for the Bill was a promotion by the Great Western Railway Company. Someone asked what these letters stood for, and while counsel for the promoters said they stood for "Great Western Railway," one of the opponents' counsel, I think it was Sir Edmund Beckett, said they really meant "Great Way Round."

In those days there was a Manchester, Sheffield and Lincolnshire Railway, which has since then suffered a "sea change" and become the Great Central Railway. But the initials of the name, which were frequently used instead of its long, mouth-filling title, M.S. & L., were said to stand for "Money Sunk and Lost," an interpretation which certainly went home to the ordinary shareholders.

But I am getting away from Committees and their Chairmen. Of course occasionally the Committee of Selection or the Lord Chairman have given us Committees which did little credit to the two Houses. I have had a Chairman who concealed his stupidity under an ominous silence. I have had others who exposed the imbecility of their mental equipment by a few irrelevant interruptions. I have had some whose slow patience was irritating, and others whose precipitancy took one's breath away. I have had those who made up their mind before the case began and others who could not make up their minds when it was finished. But on the whole the Committees on Private Bills have done well. Most of the Chairmen have shown real intelligence, sound sense, and business capacity. Seeing that the question for discussion before Committees is not really a judicial question but is an administrative question involving considerations of

public policy, I am convinced that it would be exceedingly difficult to find any better tribunal than a carefully-selected Committee of either House. But perhaps I am under a delusion when I think that with a few exceptions the Chairmen of long ago were better than the Chairmen of more recent times. I do not want to compare men ; indeed, too, we are here, like Mark Antony, " to bury not to praise " them ; but certainly in the old days we had some excellent Chairmen.

Sir Joseph Bailey (afterwards Lord Glanusk) was Chairman of the first Ship Canal Bill ; Sir Lyon Playfair, who was Chairman of the first Thirlmere Bill and who wrecked it by putting in a clause that Manchester should supply places along the line of pipes, which, when the Bill went to the Lords, was found not to be covered by the notice ; Sir Henry Selwyn Ibbetson (afterwards Lord Rookwood) ; Sir John Dorrington, who was Chairman of a Committee to which a Bill for the amalgamation of the Midland and Glasgow and South-Western Railways was referred ; Sir Archibald Orr-Ewing, Chairman of the Stockton and Middlesbro' Water Bill, 1876, were all in their way excellent Chairmen. Most of them had no doubt served an apprenticeship as Chairmen of Quarter Sessions.

But there were other Chairmen : Sir Richard Paget, who, notwithstanding a slight impediment in his speech, was a calm, careful, and judicious Chairman ; W. E. Foster—who passed the final and ultimately successful Bill of the Ship Canal Company, although at a late hour on a hot summer afternoon he rejected a clause without listening to argument for ten minutes, proposed by the promoters, the absence of which from the Act involved the Company in an expense of some hundreds of thousands of pounds—was a capable Chairman. The promoters had discovered, as I said elsewhere, that when concessions were given to various railway companies to cross with their lines the rivers Mersey and Irwell, they had undertaken or had put upon them the obligation to convert their solid bridges into opening or swing bridges at any time that the rivers were made navigable for ocean-going vessels. The promoters had not the hardihood to

suggest that that obligation should be enforced now on the main line of the London and North-Western to Scotland at a point a mile south of Warrington, although it is true that an opening bridge existed until a few years ago on the main line by the east coast route at Selby; but they did suggest that the fact that the obligation was upon the railway companies should be taken into consideration in the arbitration in any case where there was a claim by a company against the Canal Company for injuriously affecting their line by raising the level, so as to enable the railway to cross the canal at a high level. But although the proposal seemed moderately just it was brushed out of the Committee-room that hot day with a peremptory shrug—W. E. Foster had a sort of permanent shrug, as you can see from his statue on the embankment; but notwithstanding the buckshot method which was brought to bear on that clause I say he made an admirable, good, commonsense Chairman.

But there were many others in those old days who did their work excellently. Sir Ughtred Kay-Shuttleworth, who was Chairman of the Committee which decided the great Irish Amalgamation Bill when the Great Southern and Western Railway of Ireland absorbed the Waterford and Limerick line, and who has since been Chairman of a Commission which has been inquiring into the Canals, had, I think, been called to the Bar, but was nevertheless a capable and patient Chairman. There are many others that I remember with respect.

The Lords, too, in the old days had some excellent Chairmen. Cottesloe, Lord Emly, Lord Aberdare, the Duke of Richmond, Lord Auckland, Lord Lauderdale, all did excellent work as Chairmen, and it is odd how well they got through their work with pleasant courtesy and without brandishing their brief authority as some of the judges do.

The Committees in the House of Commons consist of four members, and the Chairman has a casting as well as a deliberative vote. The Committees in the Lords consist of five members, so that there is no necessity for a casting vote. Some difficulty has arisen in a Lords Committee when one of

the noble lords ceased to attend during the hearing of a case. The promoters are sometimes asked if they have any objection, under such circumstances, to go on with four members ; but now, after Mr. Pember's experience in one case, they show some reluctance to assent to the suggestion. In the case I am referring to the Chairman of the Committee was taken ill and Mr. Pember for the promoters said he was willing to go on with the Committee of four peers. But when the Committee came to consider whether they would allow the Bill to proceed or not they were equally divided, and as the rule is that on an equal division the "non-contents have it," the promoters lost their Bill.

There is a difference in the procedure of the two Houses as to the preamble of a Bill. In the House of Commons the Committee, if they approve of the Bill, declare the preamble proved and then proceed to adjust the Clauses. In the Lords the Committee say the Bill may proceed ; it then settles the Clauses and returns to the preamble ; and the latter course is the more logical of the two.

I mentioned that Committees of the Commons consist of four members and that consequently the Chairman, in case of an equal division, has to exercise a casting vote. I went down to Scotland in a case which was to be heard before a tribunal constituted under the Scotch Private Bill Procedure Act. That tribunal consisted of four gentlemen ; two of them, if I remember aright, were Members of Parliament, and two were what the Act calls "men of affairs," which is a vague but complimentary description. The case, which had to do with the extension of a burgh, went on for about ten days in one of the Courts—the annexes of the Parliament House, Edinburgh. Many of the most distinguished members of the Scotch Bar were engaged in the case, who, instead of giving the cold shoulder to the one or two members of the English Bar that were engaged in it, were exceedingly kind to us ; and there was no hitch in the remunerative proceedings until the decision. Then the Chairman, a man of business capacity and experience, said that he and one of his colleagues were in favour of

making the order, but that two other members of the tribunal were of opinion that it should be refused. Under these circumstances he announced that he gave his casting vote against the order, and therefore the promoters failed. Talk about water-tight compartments! here was a mind with thought-tight compartments. On the evidence he thought the promoters should succeed, but with his casting vote he made them fail. A house divided against itself cannot stand, and it is difficult to suppose that a mind divided against itself can have very permanent stability. Still, perhaps I am not a good critic in this case, for my clients lost their order through what seemed to be a quibble of conscience.

But leaving these high questions, let me refer to some trivial reminiscences of Committees. In the old days, just before my time, the dignity of the House of Lords was so great that counsel at the Bar were not allowed to sit down. Of course in all tribunals the etiquette of the Bar is that counsel who are addressing the Court have to get up on what George Augustus Sala, with perhaps scientific knowledge, called "their hind legs"; but that even when they were doing nothing they should have to stand was severe discipline. But although that cruelty was obsolete in my days, the almost equally harsh treatment of witnesses continued. When I went to the Parliamentary Bar no witness was allowed to sit down while giving evidence. There was a forbidding desk, like a lectern, at which they had to stand—days if the examination and cross-examination were long enough—which was called the "witness stand." That was a custom only in the House of Lords. In the Commons witnesses were accommodated with a chair, and more recently that sybaritic luxury has been adopted in the House of Lords, and everybody is seated except the poor, tired counsel. In arbitrations, however, a laxity in that respect has long existed, and counsel may, even when speaking, retain his seat, even when his proportions, like those of Mr. Pope, suggest the expediency, if not the necessity, of a more recumbent position.

There was another Spartan rule in the old days. The

committees in the Commons used to begin their sitting at noon, the Lords Committees sat at eleven ; but although the day from eleven to four was not a short one when a counsel was engaged in ten or twelve different Rooms, there was in these rigorous times no adjournment for lunch. I have seen a learned gentleman rise to cross-examine with a bun in his hand, and another gobble down two custard puddings with his left hand, for he was ambidextrous, on the sudden eve of rising to make his speech. The Committee, too, had to have their frugal luncheons brought in and to do their best to attend to the case and to the triangular sandwiches which were served to them.

Sir Edmund Beckett used to finish his lunch, also a meagre meal, with a biscuit, and as the fragile food crumbled he made a paper shoot of some of his papers and allowed the crumbs to slip into his mouth. Nowadays—quite indulgent days—there is an adjournment for a long half-hour for lunch, some of which may even be used in the interests of a cigarette.

There is only one other aspect in which the habits of these more careless times are well indicated. The Committees used to sit five days a week, and the House of Lords Committees still adhere to the "good old rule and simple plan," which was a convenience to the suitors, to counsel, and others. But the Committees in the Commons have fallen under the spell of a modern custom called "week-ends." Most of these Committees now adjourn on Thursday night until the following Tuesday morning. This adjournment gives them an excellent opportunity to forget a good deal and puts the promoters and opponents to considerable expense, for they must either keep their witnesses in town—and the herding of these in that case is not infrequently a difficult matter for the clients—or send them back to the country and bring them up to town again. You see there is not only something to be said for the "old time" Committees, but for their "old time" methods ; but I want to be fair, and admit that perhaps my admiration for the earlier men and the earlier methods is due, not to the fact of the deterioration of the present, but to the sorry fact that I am not so young as I was.

CHAPTER XV

ON " POACHERS "

Casuals—Parliament an Imperial Tribunal Open to Advocates of the Scotch and Barristers of the Irish Bar—Men who Practised at other Bars and Came up Occasionally—Mr. Milward, Q.C.—Mr. J. B. Aspinall, Recorder of Liverpool—Mr. H. M. Bompas, Q.C.—Rhymney Railway—Mr. Philbrick, Q.C.—A Too Humorous Speech—The Tedious Proser—The Promissory Note Argument—Sir Arthur Collins—Hunter Rodwell Came Back—A. E. Miller, Q.C., was Railway Commissioner—Master in Lunacy and Legal Member of Council of India—Went to the Irish Bar—Sir Francis McLean, Chief Justice of Calcutta—Mr. Ambrose, K.C.—Alfred Lyttelton.

I FEAR the gentlemen who practised at the Parliamentary Bar came to regard the Lobbies as their own " preserve," and consequently, quite unreasonably, looked upon any members of the profession who only " came up " occasionally as interlopers, and with bad taste called them " poachers." Of course these gentlemen were well within their rights and the epithet was quite wrongly applied. A man who only shoots once or twice in a season is not a poacher.

The Parliamentary Tribunal, unlike the Law Courts here, the Parliament House in Edinburgh and the Four Courts in Dublin, is an imperial tribunal, and the duly qualified advocate or barrister from any one of the three countries has a right to be heard before all the Committees of Parliament. In that way it has been my good fortune upon many occasions to meet in my work members of the Scotch and Irish Bars, and I was always pleased to hear the breezy brogue of the one or the cautious English of the other. I

am glad to say I have friends in the profession, and amongst members of the profession since raised to the Bench, both in Edinburgh and Dublin. But it was not to these that the term "poacher" was applied by the less scrupulous of those who were "in the Union," but to members of our own Bar who only got an occasional brief in Parliament and who were supposed to be making useful incomes in the other Courts. It is worth while mentioning some of these gentlemen, the comets of our small planetary system who seemed to visit us at intervals out of the "Milky Way" of the profession in the Temple and Lincoln's Inn. Many of these "casuals" were very delightful additions to our somewhat narrow, almost domestic, hearth.

I remember a tall, gaunt, hairy man with a big nose, Mr. Milward, who used occasionally to come up into the "golden gallery," as it was called in my earliest days. He was deliberate of speech, and to the impatient the deliberate seem slow, but there was no excuse for treating him as one quite junior did. The Bill, whatever it was about, was opposed by Mr. Milward, Q.C., for one opponent, and by this youngster for another, and when some witness had been examined by the promoters the young man sprang to his feet with the fine impetuosity of youth to cross-examine.

"Wait a minute," said Mr. Milward, booming like a minute gun, and then added, "I think I lead you."

Of course the right to cross-examine is in the order of seniority, and there could be no question as to the relative ages of the old white "silk" and the very new stuff. But the younger man was pert, and said as if he were in doubt,

"Do you?" and then addressing the clerk to the Committee said, "Would you send for the law list?"

J. B. Aspinall, Q.C., who was Recorder for Liverpool, a full-faced, rather claggy advocate, came up from time to time. I remember he led me in a gas case where we called "Mr. Sugg," of burner celebrity, as a witness. I think the case was one in which it was proposed in Glasgow to reduce the illuminating power of the gas on the ground of the scarcity of cannel coal. Of course since then the whole question of gas

as an illuminant has changed by the introduction of the incandescent mantle burner. Now as the lighting quality does not depend directly on the illuminating quality of the gas but on its calorific value, which produces the glow in the mantle which gives the light, the practice is to depend not so much on the photometer but upon the calorific tests; and several recent Acts of Parliament have substituted as an obligation a calorific value for the gas instead of the old illuminating power. Aspinall appeared for the Corporation of Liverpool in some of the Ship Canal Bills. It was in a sense a minor opposition, "the labouring oar," as it was called, being pulled by the counsel for the Mersey Dock and Harbour Board and the London and North-Western Railway Company. On one of these occasions, however, Aspinall was prepared to make a great speech for his clients, and had prepared elaborate notes to assist a somewhat stumbling memory. But just before the time for the delivery of the oration he had to use his notes for quite another purpose, and therefore came into the Committee plucked clean of all his fine feathers, and had to do his best with his impaired recollection of the lost notes.

H. M. Bompas used to come amongst us in South Wales cases, for he had an excellent client in the Rhymney Railway Company. He was an excellent lawyer and a pillar of Nonconformity. He was a little dull, but sagacious and sound, and when I say "sound" I do not mean it in the sense of the Scotchman who criticised his minister as "sound but a' sound." He was taken from us and put on the County Court Bench, where his qualities and learning, if they did not shine, would certainly illumine.

Mr. Philbrick, K.C., while he was still at the Bar and before he was put on that respectable shelf, the County Court Bench, used to come up occasionally. He was sandy-haired, with a most curious contortionist face. If he had left it alone people might not have thought him ugly, but he twisted it into all sorts of expressions and made himself in these acrobatic feats far from prepossessing. He was, although a little like Hugo's *L'homme qui rit*, a man of

taste and learning. He had at one time a fancy for orchids and at another for china, and I possess now an excellent specimen of Sèvres at its best which I owe to his munificence. He had a large Common Law practice as a junior, but I think he was one of those who took silk "to their own damnation."

Someone said of some modern novels that the author was not so anxious to tell the story as to show how clever he was in telling it, and certainly some counsel have more care of their own reputation than for the cause they are advocating. I remember one gentleman, and I won't remember his name, who made in one case a very humorous speech. The members of the Committee grinned as broadly as was consistent with the dignity of the Bench. Even the opponent's counsel laughed grudgingly. The little audience behind the counsel's seat was on the verge of guffaws. The half-hour went pleasantly, but he lost his Bill. The tribunal seemed to feel that there was nothing but laughter in the promoter's case.

Oliver Wendell Holmes, who, you remember, said he had written a poem which produced "fits" in the printer's "devil" who glanced at the proofs, said that since the lad's illness, when he (the poet) had watched beside his bed for weeks, "I never dared to write as funny as I can." Perhaps the gentleman in question has also been less humorous since the death of his Bill. If you want to impress your tribunal you must be in earnest and put the bone of your back into your advocacy and not merely the muscles of your face.

At the same time I have heard counsel who were quite strenuous in their advocacy but whose eagerness went to length rather than breadth, whose tediousness, while it did not convince, certainly bored the Committee. Good advocacy ought to be short. I am not mentioning names, but I have tired memories of some of these too thorough arguments.

While I am speaking *in camera*, as it were, let me recall two members of the Bar, both very successful men, one of whom

rose to the highest distinction, who indulged in the "promissory note" kind of argument. When the Court or Tribunal asked an awkward question of them, instead of answering like a man "standing and delivering" on the highway, they evaded it as a snake evades, by a specious promise that they were "coming to that." The courteous judge felt apologetic for his impatience, but notwithstanding the promise they never came back to the question. The promissory note was never met. It was perhaps a clever means of evasion, but it was not in my view good advocacy. A straight answer to the Court turns away wrath, and the one thing—although it may sound strange to lay ears—that a Court has a right to from those practising before it is candour.

I remember once saying of one of these gentlemen in a case where he was opposed to me—and I believe I was justified in using Gilbert's words,

" He argued high, he argued low,
He also argued round about it."

Sir Arthur Collins, afterwards a Chief Justice in India, came up into the Lobbies in some West Country cases. He was a tall man, lath-thin, physically of high standing, but, if my memory is not doing him an injustice, with a commonplace lawyer mind. I do not know whether he was a successful judge in India. I do not believe that it requires any transcendent ability to be a successful weigher-out of justice; indeed, if I boarded history I could find many men who had, in the common phrase, "adorned the Bench," and were yet men of the most meagre ability. A man at the Bar can shine like a searchlight; a man on the Bench should be like a closed bull's-eye lantern.

But there was one sad feature about Sir Arthur Collins' career. After his "term in India," if I may use the phrase which criminals use as to their imprisonment, in reference to such an august position, he returned to this country and hoped to return to his practice at the Bar. It was a mistake. A counsel is "in fashion" for a time on his circuit, or in

London, but the fashions change and any modiste would tell you it is no use trying to sell last year's clothes to the novelty-seeking eyes of to-day. And so it is with counsel. A man in mature life returning from a colony and thinking to get back into practice is like a "growler" trying to filch the trade of a taxi. Indeed, I am of opinion that there is no resurrection at the Bar. I have seen unsuccessful attempts to get back into practice made more than once.

At the dinner that the Bar gave to Sir Edmund Beckett when he retired, Hunter Rodwell, a tall man, a gentleman, with an aquiline nose, said we must not be surprised if we saw him in the Lobbies again with a brief under his arm; and sure enough he not long afterwards gave up his seat in the House of Commons (he was member for one of the divisions of Cambridgeshire, I think) and came back. I was his junior in some Bills after his return (in a South-Western Water Company Bill and others) to the close-nibbled pastures of Parliament, and although I found him a delightful gentleman I was not struck by his ability as an advocate. His style was a gentlemanly, slap-dash style, but there was no real human grit in the man. I think the clients found it out, too, for although he had some small success for a time to begin with—for the going of Beckett had left a good many briefs for others—his practice fell off, and when it disappeared so did he, and we missed his breezy presence. Shiress Will, too, as I have said elsewhere, found that when he gave up his seat for the Montrose Burghs there was no place for him amongst his former colleagues. The ranks had closed up.

A. E. Miller, Q.C., of the Chancery Bar, succeeded Mr. Macnamara as Railway Commissioner when he died. Macnamara was a round man with a benevolent disposition. All who knew him liked him. He was a sound lawyer, but, strange to say in a man whose learning was dry as dust, he was a great admirer of Jean Paul's *Flower, Fruit, and Thorn Pieces*. Miller, who succeeded him, was a man of acute ability. It was said of Cairns that Westbury early in his career had predicted his rise, and Cairns in his turn said of Miller, with whom he was connected, that he was "a hard

nut to crack," which I take it was meant to be an anticipatory compliment. But quickness and alertness were certainly more characteristic of him than the mere stubbornness of a nut. He was rather hardly treated by Government, and I mention him here to show the difficulty of "resurrection." But Governments have no bowels of compassion.

When the Railway Commission was reconstituted under the Act of 1888 and a judge of the High Court was made president of the Commission, Mr. Miller was "shunted"—that is the right word to use in this connection—into the convenient siding which is called a Mastership in Lunacy, with a salary of £2,000 a year instead of the £3,000 he had been having as a Railway Commissioner. He gave up the Mastership and became legal member of the Council of India, which, while it was better paid, was an office which was only to be held for five years. He was lost sight of during those five remunerative years in India, but returned at the end of them, and although late in life was called to the Irish Bar, in the hope, I believe, that he might get work before the Railway Commission Court when it sat in Ireland. I believe the venture was a failure and the "hard nut" was cracked by death not very long after his attempt to begin life again.

McLean, afterwards Sir Francis McLean and Chief Justice of Calcutta, had a friendly client who brought him down to Westminster in those old days. He was a man with a big body (perhaps I should call it a "noble presence"), a big jowl, and, as became such a presence, he was a little pompous even in those days. Many people would have called him handsome. He had black hair, rather overshadowing eyebrows, and was, when I knew him, notwithstanding his estimate of his own importance, always genial. But after a time he ceased to come up—perhaps his one friendly client was no more—and then after an interval he too was made a Master in Lunacy. That office is a kind of shoot, not for rubbish but for the not quite successful, and was filled, as we have seen, by Miller, by McLean, and by Ambrose, who had to tilt his head back to enable him to see.



THE LORD CHIEF JUSTICE OF ENGLAND (SIR RICHARD WEBSTER, K.C.)
Photo. Elliot & Fry

He was a little man with a face rather curious than pretty, and the strange difficulty of seeing which made him throw back his head and sometimes even to shade his eyes with his hand, as if you were the sun, was almost a deformity. He sat in the House of Commons for many years as representative of the Harrow division, but how he ever saw eye to eye, poor man, with his constituents I never understood. I was opposed to him more than once, and, notwithstanding his physical defects, found him an astute and capable lawyer. To look at he seemed astray ; but as an antagonist he was "all there." He was rewarded, as I have said, for his political services, by the Mastership in Lunacy, but whether he held the office before or after McLean I am not now sure. But McLean did not end in that backshunt or relief-siding, but was, as I said, made Chief Justice of Calcutta, a dignity he bore with increased pomposity.

Stories are told of the way he bore himself after his elevation to that proud but distant office, both on board ship and in the demand for a front seat in church or cathedral in Calcutta, but as they are a little malicious I will not repeat them here. He served his time and returned to this country with a pension, and he had leisure to remember the triumphs of what would, no doubt, be regarded as a successful professional career.

Alfred Lyttelton had some practice at our Bar before he went into Parliament for Leamington, and even after he became a Member and after he had ceased to hold office as Colonial Secretary, I was before him while he was sitting as arbitrator in several important cases. He was a lovable man, but how he did so well at the Colonial Office in succession to Joseph Chamberlain puzzled me, for although he had charm it was mild charm. His mind was soft, not hard ; gentle, not tough. As an arbitrator he was kind, courteous, and correct. It was while he was at the Colonial Office that I went out as counsel for the Government to Singapore in the Tanjong Pagar Case which I have mentioned elsewhere, and when the case was all over I saw him at the Colonial Office and he said one of the reasons

why the Government purchased the undertaking was that they found that shares in the Company were being acquired to a considerable extent by Germans. It would scarcely have done to hand over the key to the East to them.

During the election of 1910 I was on the same political platform with him once at a great demonstration at Bradford. At that time, and also in 1906, I had had what in more lucid intervals may be regarded as an insane desire to enter the House of Commons. I found that on both these occasions I had the greatest good-will and best wishes from my colleagues at the Bar! But these political escapades are, as Kipling says, "another story," and I only mention the Bradford meeting to say that it confirmed me in my opinion of Lyttelton as a man.

CHAPTER XVI

STRONGER THAN PARLIAMENT

What Parliament can do—Has Discouraged Corporations Subscribing to Companies—In Hull and Barnsley Case—In Ship Canal Case—The Undertaking Derelict—Corporation Lent £5,000,000—Liverpool Docks Taken from Corporation and Transferred to Trust—Corporations in Competition—Bristol Docks, and Docks at Mouth of Avon—War of Rates—Ruinous Competition—Purchased Rival Undertakings—Preston and the Ribble Navigation—Nottingham Corporation and Trent Navigation Bill—North-Eastern Railway Company's Desire to Acquire Hull Docks—Refused by Parliament—Chairman's Interest in the Company—The Railway Company Forced Hand of Parliament—So with Regard to Southampton Docks and London and South-Western Railway Company—The Purse Mightier than the Legislature—Public Safety and Level Crossings.

WE are in the habit of thinking that an Act of Parliament can do anything, but rightly looked at even Parliament is a limited monarchy, and the force of circumstances is often much stronger than both Houses of Parliament put together. It is quite true, however, that Parliament can do a good deal of mischief if it is so disposed, and even if it is to be credited with the best possible intentions it very often blunders, for evil is wrought by want of thought as well as by malice. In considering, therefore, legislation, one must have regard to the force of circumstances. It has been the policy of Parliament—and a proper policy, it seems to me—not to allow corporations to subscribe to the capital of industrial undertakings. An undertaking should be frankly an enterprise of private capital, or avowedly a municipal

adventure ; and to allow ratepayers' money to be invested in a work which may turn out to be a losing concern is short-sighted policy. It is true that the Legislature has departed from that principle in one case. When the Hull and Barnsley Railway and Dock Company obtained an Act in 1880 the Corporation of Hull was allowed to subscribe £100,000 to the capital, and it did it. So far as I know that precedent has not been followed, but in a certain number of cases the force of circumstances has been too strong for the Legislature and has forced its hand. Thus when the Ship Canal, upon which many millions of money had been spent, was about to come to a standstill in its construction, when there was no chance of raising another penny towards its completion from the public, Parliament in 1891, in a Bill promoted by the Corporation of Manchester, allowed the town to lend the Company £3,000,000 ; and when even that large sum was found not to be enough, by another Act in 1893 the Corporation got power to lend the Company another £2,000,000, which enabled it to complete the canal. As a condition of becoming the lender the Corporation were to have a majority of directors on the board of the Company. But although Manchester was allowed to find this money and I believe receives interest upon it, an application on the part of Salford to be allowed also to become a creditor of the Ship Canal Company was refused.

Some of these municipal speculations, even when they have been brought about by *force majeure*, have not been very happy ones. Indeed, at one time the tendency of legislation was in the other direction. Liverpool Corporation were the owners of the docks both on their own side of the Mersey and at Birkenhead, but these were passed over by Parliament into the hands of a Trust—the Mersey Dock and Harbour Board.

One of the inconveniences of municipal ownership is well illustrated in the case of the Bristol Corporation. That Corporation was the owner of the docks in the town, but to reach these, vessels had to go a good number of tortuous

miles up the narrow Avon. The size of vessels increased, they had now a deeper draught and a wider beam, and it occurred to certain promoters to make docks at the mouth of the river in the Bristol Channel. One of these was constructed at Avonmouth, on the northern side of the trumpet-mouth of the river Avon, and another at Portishead, on the south side; and when these were opened to get traffic into them the companies began a war of rates which went very far to kill not only their own aggressive docks but the older undertaking of the Corporation. In this case there was active competition between the ratepayers of Bristol and the shareholders of the rival docks—a very unseemly competition and one which was certain to prove disastrous to the whole of the three enterprises. Here then the hands of the Corporation were forced, and they in their turn forced the hands of Parliament, and were allowed, to save their own undertaking to purchase the two down-river docks.

But even where such ruinous competition does not come in, such an enterprise in municipal hands may well prove to be a white elephant. It is thus that the improvement of the river Ribble and the construction of a dock at Preston has proved an untoward experiment. Preston has not been able to create a trade, and the ratepayers of Preston are still paying very heavy rates in the pound for the waterway to which traffic does not come.

But there are many illustrations of the strength of circumstances. Only in the session of 1914 the Corporation of Nottingham applied to Parliament for the transfer of the Trent Navigation to them and for leave to find the money which was necessary for the carrying out of certain works for the improvement of the navigation, which is a waterway down to the Humber which had been sanctioned in the hands of the Company by an earlier Act, but for which the money could not, it was said, be found by the owning Company. This was not merely a proposal to lend the money but practically to take over the Company's undertaking, although the Company was still to exist for

the purpose of managing the navigation. There was much to be said, and much was said, against the proposal. The Railway Companies, rival carriers of the Canal Company between Nottingham and the Humber ports, said it was unfair to compete with them by means of the rates of Nottingham, to which they by virtue of their property in the towns contributed. It was also urged that if the Corporation once put its hand into such a poor lucky-bag it would be unable to draw it out again, but would have to plunge deeper and deeper into an enterprise which was not really a municipal function and so send more good money after bad. But the fact that the waterway for which the Corporation was going to find the money had already been sanctioned, that the contemplated improvements had been approved by Parliament, and that there had been since the report of Lord Shuttleworth's Commission an idea that the moribund canals of this country could be galvanised into life again if only the battery of money could be applied to them, prevailed, and the Bill passed into an Act.

There is another illustration of the impotence of Parliament in certain cases. It has always been unwilling to allow railway companies to become the owners of dock undertakings. Indeed, there is a standing order of the House which says that in the case of any such proposal the Committee is to make a special report to Parliament of the reasons which call for the passing of the Bill.*

¶ In 1892 there was an application made to Parliament for the amalgamation of the Hull Dock Company and the North-Eastern Railway Company. A somewhat curious incident occurred in connection with this Bill and another which was to authorise the North-Eastern Railway Company to construct a new dock at Hull. Mr. Richard Chamberlain was Chairman of the Committee. The inquiry had gone on for seven or eight days. A witness

* The words of the standing order are: "That no railway company shall be authorised to take or lease any canal or dock . . . unless the Committee on the Bill report that such a restriction ought not to be enforced with the reasons and facts upon which their opinion is founded."

was put in the chair, and to throw suspicion upon the value of the evidence he was cross-examined as to his pecuniary interest in the Bills. The Chairman seemed to deprecate the question, and said, "If it comes to that I am interested, for I hold shares in the North-Eastern Railway Company to the amount of £2,000 or £3,000."

No one made any observation at the time, but some of us lifted wondering eyebrows, for there is a standing order under which each member of a Committee, before he is entitled to attend or vote on such a Committee, has to sign a declaration that his constituents have no local interest and that he has no personal interest in such Bill.

On the following morning; while Mr. Bidder was replying on the whole case, Mr. Chamberlain adjourned the Committee for a few minutes; and on returning said that he had been under the impression that the holding of shares in a railway company by a member of a Parliamentary Committee was considered to be an interest so remote as to be no interest at all. "When," he went on, "he casually mentioned his interest on the previous day, he observed counsel turn to their standing orders. Knowing their experience in these matters he had been led to make inquiry of the Speaker that morning before entering the Committee. He had no alternative but to retire. Some apology was due to those concerned that he had not made the discovery earlier, but there had not been a shadow of doubt in his mind until now."

Mr. Bidder urged him to continue as Chairman, and said he was sure the parties would acquiesce. But he refused; and said that Mr. Speaker's advice was that the quorum consisting of three members of the Committee should continue the proceedings on the Bills. Mr. Evershed, one of the other members, took the chair and said they were going on with the inquiry. Mr. Bidder refused to go on with his speech in his well-simulated dudgeon, and the Committee after a short consultation announced that the preambles of the Bills had not been proved.

The incident is an interesting one and shows how lightly

some people make "declarations," but I mentioned the matter to show that notwithstanding a standing order which points to the undesirability of a dock becoming the property of a railway company, notwithstanding the rejection of that Bill in 1892, the North-Eastern Railway Company and circumstances proved themselves stronger than Parliament. The Railway Company subsidised the Dock Company to the extent of some £5,000 a year for some years, and then came to Parliament and said that unless it was allowed to become the owner of the docks it would withdraw the subsidy, and that then the dock undertaking at Hull would be derelict. So it had its way and the Hull docks are now the property of the North-Eastern Railway Company.

An exactly similar thing took place with regard to the docks at Southampton. I think, although I am not certain, that there had been an attempt on the part of the London and South-Western Railway Company to get these docks into their own hands, which had failed. The Railway Company then, instead of throwing a sword into the scales like—who was the conquerer?—threw its money-bags into the balance. It helped the Dock undertaking until it was quite dependent on the generosity of the London and South-Western Railway Company; and when it was in that position Parliament had to permit the amalgamation.

But this shows that if the pen is mightier than the sword the purse is mightier than the Legislature.

There is a Section in a general Act of 1863 empowering the Board of Trade at any time, if it is necessary for the public safety, to require a railway company to do away with a level crossing and substitute a bridge, but even then a Court of Law has solemnly decided that a mandamus will not lie to compel the company to construct such a bridge when the company has not the money and has no means of raising it. Thus it seems that the public must still go on being killed at a level crossing which the Board of Trade have found to be dangerous, and that the

railway company can say with the apothecary who sold the poison in *Romeo and Juliet*, "My poverty and not my will consents." But the Court seems to have acted upon the proverbial wisdom which is contained in the Scotch proverb which says, "It is hard to take the breeks off a highlander."

CHAPTER XVII

RETAINERS

A Compliment and a Nuisance—"The Queen's Shilling"—Disputes as to Referred to the Attorney-General—The Dispute About an Early Retainer—My First Parliamentary Five Guineas—A Meeting at the "Bull"—New Company Bought Off—General Retainers from Companies and Corporations—Tube Railway from Hammersmith to the City—Metropolitan Railway Company's Claim—The Attorney-General's Action in a Dispute between Two Companies—Solomon's Bisection of a Baby Nothing to it—The Bradford Corporation's Demand on a General Retainer—Mr. McGowan then Town Clerk—Acted for Morley Corporation—In a Rating Case—Sir William Robson's Decision—The Case before Quarter Sessions.

RETAINERS are a compliment and a nuisance. In one's early days the receipt of a retainer makes one walk upon proud toes, for does it not mean that the client who sent the retainer, accompanied, if you are lucky, by a guinea (for Common Law), or five guineas (for Parliament or the House of Lords), is so afraid that the other side may want your invaluable services that he takes this means of frustrating these tactical intentions? Of course that is a great compliment to the young man. The retainer is an important rung in the ladder by means of which he is to climb into the prominence he feels he deserves. A retainer—as no doubt the half-informed public understand—is a payment resembling the "Queen's shilling," as it used to be called, which was given to a soldier when he enlisted, or like the "arles" which were given to a servant when engaged by a master. It clinched the bargain. And so, having touched this precious guinea,

you are "thirled" for the particular case by this hook of a coin. Of course, as I have said, in one's younger days at the Bar these compliments are few and far between, and the disputes which arise as to the nice questions connected with retainers do not arise.

The first dispute that occurred with regard to a retainer in my experience, might have ended disastrously for me. I was on circuit and looking on with hungry eyes at the fortunate men who were doing a practice at Leeds. Amongst the leaders there were Field and Price and Digby Seymour; amongst the juniors, Alfred Wills, L. Cave, and John Mellor. I was doing nothing, like some of my colleagues in idleness, but we all felt that we could do the work better than those obsolete leaders who had forgotten any law they ever knew and had acquired nothing to make up for its loss except the brazen face of pretended experience. As I was idle I accepted an invitation to dinner—a quiet dinner with a man I knew who acted as a solicitor in a town at some little distance from Leeds. I went over to dinner, and when I arrived at my friend's house he said that when he asked me he had quite forgotten that he had to go to a meeting that night after dinner at the Bull Hotel, with reference to forming a new Water Company. We had dinner, and when it was time for him to go to his meeting he asked me to go with him, and I went.

The meeting of these important gentlemen was not a large one, but there were capitalists among them, and they had made up their minds to promote a Bill to incorporate a new company which was to supply the town and suburbs with pure water—the existing company, which had statutory authority, supplying, according to them, not water but diluted sewage to the consumers. The gentlemen not only wanted a good investment—the existing company's shares, notwithstanding the foul water in its pipes, being at a premium—but they placed the stress of their argument, of course, upon the public health necessity of a pure and wholesome supply of water to a population in which zymotic disease was too frequent. Well, although

I knew nothing about Private Bills in those days, I put in my word in the discussion that took place at the "Bull," and gave my callow opinion with a certain amount of aplomb; and I went back to Leeds and thought no more of the matter.

That was at the time of the Summer Assize, and some time in the late autumn or winter following I received—I shall never forget it—a retainer, £5 15s. 6d., for the old water company that was to be accused of such a dirty water supply. The old company had made up its mind to promote a Bill for a new and pure supply in the coming session and it was to promote that that I was retained. Oh, how my pride swelled when I looked at that blue piece of paper! A real retainer from a first-rate firm of Parliamentary agents. But that was not the end of it. A few weeks afterwards I had a letter from the friend with whom I had dined, who said that he understood I had accepted a retainer for the old water company's Bill and that he was surprised I had done so. He reminded me that I had been at that famous meeting at the "Bull" and that, of course, it was his and the promoters of the new company's intention that I should act as one of the counsel for the new company. Here again was compliment. They were falling thick upon me. I stood upon my infant dignity and wrote to him and said that as there was a dispute about a retainer it had better be referred to the Attorney-General, who by an ancient custom of the profession is bound to determine all these questions of retainers as a sort of Court of Honour for a nominal fee of one guinea.

Well, my friend did not take that extreme and extremely complimentary course, and a few weeks afterwards I heard that the new company, forgetting its sanitary position, had been bought off by the old company which supplied the foul water for the sum of £5,000, and had withdrawn their Bill.

Now if the Attorney-General had been appealed to and had decided that that indiscreet dinner and "Bull" meeting bound me to the new company I would have had no brief at all; but as it was I held the old company's brief, and the

matter went on for a fortnight in the one House and a month in the other, and gave me a chance which I might never have had if the specious argument as to my presence at the "Bull" meeting had prevailed.

That shows that there are often difficulties about retainers.

Of course in one's early days one does not get those delectable things, general retainers, which are even more of a compliment and even more annoying than those which have reference only to a particular case. The general retainer from a company or corporation entitles them to your services in every case in which they appear, and gives you a right to a brief on every such occasion. Sometimes one of these retainers means a number of briefs in a session, and these may really bring in a considerable income. It was the practice of the companies whose general retainers I held to supply to my clerk a list of the Bills that they meant to oppose in the coming session of Parliament.

I remember one session there was a tube railway promoted. It was to run from Hammersmith in the west and by the Strand and Fleet Street to the City in the east. This Bill was one of those which the Metropolitan Railway Company, whose retainer I held, had given notice that they meant to oppose. But, not content with a general retainer notice, when the promoters of the new railway sent me a retainer to promote the Bill I got my clerk to go to the solicitor for the Metropolitan Railway Company and ask if they really meant to oppose; he was assured that they certainly did, so I returned the promoters' retainer, which went to another and perhaps a better man. But as the Metropolitan Railway Company did not oppose the Bill after all I was out of it. That is an indication of the disadvantages of a general retainer.

Even the exercise of the Attorney-General's functions as to retainers does not protect one from injustice. I was counsel for a Didcot and Newbury Railway Company in an application to the Railway Commissioners against the

London and South-Western Railway Company. The application was disposed of—it does not matter how—by the Railway Commissioners' decision. Some time afterwards the London and South-Western Railway Company sent me their general retainer for Railway Commission cases, and a year or two after that the Didcot and Newbury Company made another application to the Court, and the London and South-Western Railway Company were again the respondents. The case was an entirely different one from that which had been dealt with by the Commissioners before. The Didcot Company sent me a brief which I refused on the ground that I had the general retainer of the London and South-Western Railway Company and must act for them.

The two Companies stated the facts in a case for the opinion of the Attorney-General, Sir Richard Webster, and his decision was as wise as Solomon's as to the claimed baby—it was that I should not act for either the Didcot Company or for the London and South-Western Railway. Oh, "a second Daniel come to judgment" !

But that sort of decision would soon make ducks and drakes of one's practice. In my early days there was a Mr. McGowan, the Town Clerk of Bradford. He was a paunchy man with a face upon which expressions played like Punch and Judy in the wandering street theatre. But he was really, to use Kipling's words, "a first-rate fighting man." He had sent me a general parliamentary retainer for the Corporation through Mr. Clabon, a nice old gentleman who had seen better days but who still acted as parliamentary agent for the Corporation. Some time after—it might be a year or two—a dispute arose between a place called Guildersome and Bradford as to whether the former was entitled to get its water from the neighbouring borough of Morley—the place, by the way, where Mr. Asquith was born, and anyone who knew it would say wisely left. The smaller authority sent me a retainer for the arbitration which was to take place to settle the dispute. Mr. McGowan insisted with a vehemence worthy

of a more important cause that I must not take it but must act for Bradford. I pointed out to him that the retainer he had sent me was distinctly stated to be for or against Bills in Parliament, and as this was an arbitration his retainer did not cover it. I think he must have seen the cogency of the argument, for shortly after he wrote and told me that he had arranged with the other side that they would not insist upon their retainer and he would not insist upon his ; and he regarded the arrangement by which I was not to appear in the case at all, as satisfactory.

I wrote to him and explained that I could not afford to be so popular and so much sought after, and in the end I did appear in the interest of Guildersome, and Shirees Will had the brief for Bradford Corporation.

But the " old war horse," as some of us used to call Mr. McGowan, would not let him conduct the case, and continually interrupted him and put in strenuous words which were all in italics as compared with Will's ordinary print. So much so that at one time in the Arbitration Mr. McGowan, disgusted it may be with Will's mild urbanity, shut his eyes, and I remarked to the Umpire, " Thank Heaven, Mr. McGowan is asleep at last." But he was far from asleep. When it was over he did not resent my serving the enemy on that occasion, and our relations—for I continued to hold the Corporation's retainer till the end—continued to be friendly and, upon my side, at least, admiring.

Upon a somewhat recent occasion the anomalous jurisdiction of the Attorney-General in the matter of retainers was demonstrated. There was a rating appeal as to the rating of a great railway line in some sixteen or seventeen parishes in a union. The solicitor who was acting for the union sent me the magic guinea and described it as a retainer in the matter of the appeal of the Railway Company in the parish of A. The Railway Company's solicitor, while inspecting the books of the union, detected what he thought was a penurious error. The retainers should have been not for one parish but for each of the

sixteen or seventeen parishes, for there was a separate appeal in each ; and thereupon he sent me a general retainer for the Railway Company in all railway cases. Then there was a dispute between these two gentlemen and ultimately it got into the hands of the Attorney-General, Sir William Robson, who, I think contrary to strict law but possibly in accordance with his idea of justice, decided that I must act for the union ; and in fact I did, with Sir John Simon as my junior and, stranger still, Sir Robert Romer sitting as Chairman of Quarter Sessions. I will not venture to discuss his great merits as a Lord Justice, but I never wish to be before a more competent Chairman of Quarter Sessions.

But I think I have made out my point that retainers are very often a nuisance.

CHAPTER XVIII

WITNESSES

Clergymen as Witnesses—Where a Minister Gave Evidence—Emptied the Church—An Afternoon Hearing—The Moral Aspect of an Extension Bill—Cross-examination of a Vicar—All Sorts of Witnesses—One that will not Answer and one that Answers too much—A Secretary's Fitter—Accountants as Witnesses—Doctors as Witnesses—Scientific Witnesses—Geology and Hydro-Geology—Brine Pumping in the Salt District—Surface Damage—Dry Rock-Salt Mines—Brine "Runs"—The Law as to Taking Rock-Salt—Bills to Make Pumpers Liable for Damage by Subsidence—Underground Water—From Strata under the London Clay—Bristol Case—Water Escaping into Sea at Weston-super-Mare—The Strata and "Faults"—Surveyor's Evidence of Value—Great Differences in Amounts—Witness in a Rating Case, and Mr. Lush—Sir Frederick Bramwell in the Regent's Canal Railway Bill—Mr. Mansergh and his Experience—Evidence About Finance—Brokers and Bankers—Good Counsel get Good Witnesses—An Excellent Lady Witness.

CLERGYMEN do not as a rule make good witnesses. Having been used to an autocratic pulpit they do not take kindly to the chair where the bladders of their pomposity may be pricked by a sharp question. Still, I have seen both clergymen of the Church of England and Fathers belonging to the Church of Rome in my time give excellent, straightforward evidence. And that is really the art of evidence. If you are straightforward and modest you are more than a match for the best counsel that ever glared at you through his spectacles.

I am afraid of being accused of being in my anecdotage or at any rate of having a very egotistical memory if I

mention one or two facts as to witnesses that have come within my knowledge in the course of my practice.

There was a proposal to make a railway which would disturb or possibly involve the removal of St. Enoch's church in Glasgow. It still stands there, with a modest little spire overshadowed by the great bulk of the Glasgow and South-Western Railway Company's station and hotel. I remember those who sought to justify the removal of the church said, I daresay with some truth, that the centre of Glasgow, like the City of London, was deserted on a Sunday, and that therefore the necessity for a "place of worship," as they called it in that locality, had passed away. They called a minister, who was no doubt a shining light in the lantern of some West End pulpit, who had preached in the church and who spoke to the smallness of the congregation. Of course it was too obvious a retort of the cross-examiner that the people knew he was going to preach, for just as it can always be said of a doctor as was said of Dr. Fisher,

Here Doctor Fisher lies interred
Who filled the half of this churchyard,

so it can always be said of a minister that he has emptied the church. I think the reverend gentleman to whom the suggestion was made that he had emptied St. Enoch's resented the idea that he had himself produced the vacuousness, so to cheer him up when he rather huffily left the witness chair I said as genially as I could, "Never mind, Mr. —, I will give you an afternoon hearing whenever I can," a promise, I fear, which added insult to injury and which I have never, as the Scotch say, been able to implement.

The alteration of the boundary of a town, or the federation of several towns, is often an advantage on the ground of the economy which may result from the reduction in the number of officers and employees, and on the ground that greater efficiency may be got from central management; but it was left to a reverend vicar on a recent occasion, to suggest a new reason for the amalgamation of two neigh-

bouring towns. He said in cross-examination he thought the amalgamation was desirable "in the main from the moral point of view." A few sentences from his cross-examination, taken from a local paper, may be interesting, although they do not justify his novel hope.

"Let us see why it is desirable from the moral point of view."

"I think the moral tone of the whole town would benefit by amalgamation."

"This is a new argument. Tell me why. Is the moral tone of A so very high?"

"As high as most towns, probably."

"And is the town (that was B) in which you are a ministering angel as high as most towns?"

"I think it is."

"Do you think the larger the town the higher the moral tone?"

"I think in some instances that has been the case."

"Has it? London, for instance, is the most moral place in Britain?" (Laughter.) "Don't you see that from the moral point of view the town would be exactly the same size, whether called A or by separate names? Where then does the moral argument come in?"

"I think myself questions of housing, public morality, and other things would be dealt with by a body of more picked men."

"What do you mean by more picked men? Are B men not picked men on the Town Council?"

"I quite agree they are."

"Would you be a candidate yourself?"

"No."

"All this generalisation may do for the place you stand in on Sundays, but I want some particulars as to how the moral tone is to be altered."

"I know so from other towns. More particularly I know Liverpool, where the amalgamation has been to improve the condition of things generally."

"Has the morality been higher in Liverpool since amalgamation?"

"I think so."

"Then amalgamation may supersede the Church?"

As I say, I have been quoting from a newspaper report of evidence which counsel in his speech described as "worse than cant," but which is really typical of a good deal of clerical evidence I have heard, which makes me think of the clerical attitude as very like that of "Johnny-Head-in-Air," in Struwpeter, where the little boy with his face turned to heaven watched the swallows flying and consequently did not look where he was going and fell into the water, where he became food for fishes.

It is not my intention to throw ridicule upon religious men or their creeds; indeed, I agree with Mr. Arthur J. Balfour, that "all creeds which refuse to see an intelligent purpose behind the unthinking forces of material nature are intrinsically incoherent." But there is a great difference in "cloths" and in the men who wear them. There are some of these that are aggressive and pugnacious in their propaganda, while there are others that teach better by their quiet and excellent lives. For the latter I have nothing but respect and admiration; for the former I admit I feel a kind of angry antagonism.

Of course there are all sorts and conditions of witnesses. There is the witness that will not answer a question and sits there like a truculent iron safe; then there is the equally annoying witness who answers too much and makes every question the occasion of a harangue. There are some witnesses you have to draw the evidence from like a cork out of a bottle with a screw of a question, and others that gush like an open sluice. There is the stubborn witness who will answer in "his own way"; the witness who, when asked to answer "Yes" or "No," thinks himself very clever when he answers "Yes and no." Then there is the perky witness who makes himself offensive by a cocksureness of manner. One of these latter gentlemen came



LORD LLANDAFF (MR. HENRY MATHEWS, K.C.)
Phot. Elliot & Fry

from Newcastle in a case and gave his evidence with jaunty assurance. He said he was a "secretary's fitter." When I came to speak I admitted my ignorance as to what a secretary's fitter might be, but I said I could understand that there might be a fitter secretary than the brazen-fronted witness.

The mere use of the word reminds me of an incident at a public dinner where Sir Frederick Bramwell was in the chair. He had great bulk, an eminent waistcoat, and on that occasion his health as Chairman was proposed—"the Chairman," said the proposer, "who so fittingly fills and so fillingly fits the chair."

Upon another occasion I had a conceited witness to deal with and perhaps I was not as courteous as I should have been. During his examination-in-chief he sat in the chair and "spread himself," so to speak. He seemed to have a tolerant contempt for his own counsel, and no doubt a pitying hate for anyone who was opposed to him. During the whole time he was in the chair he had a long pencil stuck behind his ear, and when it was my turn to cross-examine I said,

"Would you remove that pencil? I cannot cross-examine a moulting porcupine."

He complied nervously with my request and was a humbler and better witness after that.

Accountants, as a rule, make good witnesses and doctors bad ones. Engineers are more advocates than engineers—and that is not a good mongrel.* But there is one thing true of all witnesses—they go away thinking they had the best of the tussle, and many of them will tell their friends and acquaintances how they got the better of the great K.C.; but the more they think that the less useful they probably were as witnesses to the people that called them.

There was sometimes a good deal of interest connected

* I remember many excellent engineer witnesses: Hawkshaw, Fowler, Baker, Bateman, Hawksley, Hill, Stevenson, Linsey, Corbett Woodall, Cunningham, Hall-Blyth, Wolfe Barry, Elliot Cooper, Tait, Shelford, Easton, Rofe, Eaton, Mansergh, Strachan, Graham, Bramwell, Harris, Taylor, Sellon, and others.

with scientific evidence, especially with that of geologists. It is well known that there have been great subsidences owing to the pumping of brine for the manufacture of salt in the Northwich and Winsford district. It is a great industry, but it has done a great deal of damage. One comes in various places on "flashes" or lakes which have been formed on the surface by reason of the caving in of a mine, or otherwise by the operations of the brine pumpers. In several cases houses and stables have actually collapsed, and although no human lives have been lost several horses have been killed. I had pointed out to me a house which had at one time been on the level, but owing to the subsidence of the land below it it sank until the road near it was on a level with the first-floor windows. At that time it was said that the postman delivered his letters, not at the door, but at the higher level of the bedroom window. Later there was a further subsidence, and the house, which still survived as a house, was down in a deep hole. Then it was believed that the postman delivered his letters down the chimney and they all arrived black-edged. But whether that is authentic history or not, the subsidences have been great and the surface damage very considerable.

At first salt seems to have been got by means of mining the rock-salt, and I have been down one of these old dry mines and when it was lighted up it was like a scene in a pantomime. Of course there were no ballet fairies, but the light on the rock crystals made the great dark cavern a twinkling firmament full of mock stars. But it was not these dry mines that caused any surface damage, for in mining pillars of salt had been left which supported the roof. When, however, water gets into such a mine it soon dissolves the pillars and produces brine, which is only water fully saturated with salt, which, while it remains in contact with the pillars would do no harm, for as the brine is fully saturated it cannot act upon the rock-salt; but if that brine is pumped away and its place is taken by fresh water from the surface the process of gnawing the pillars goes on and in the end these would be removed altogether, and when the

unsupported roof fell in there would be a great subsidence on the surface.

But there were other means of getting brine besides the working the pocket of the old mine. There are in these districts brine "runs." When fresh water percolating from the surface comes to the rock head—or the top of the bed of rock-salt—it forms brine by denuding the surface of the rock-salt, and if the pumper can come upon the run he can go on with the assistance of the percolating rain-water to get brine from the run, brine which may have been formed at a considerable distance from his pumps, and formed of rock-salt in properties which do not belong to the brine pumper.

That this sort of thing was going on on a large scale in these districts was unquestionable, and it amounted to nothing but robbery by means of water. As a matter of law it was obvious that if any of these gentlemen who were making fortunes by pumping brine had come upon his neighbour's land and had with pick and shovel taken away his neighbour's rock-salt, an action would have been maintainable against him and such theft could have been prevented by injunction. Now the law, which—notwithstanding some derogatory opinions—has some intelligence, admitted that there was no magic in a pick and spade, and that if a man took away his neighbour's rock-salt by pumping the brine from a run the law was not powerless to prevent such pocket-picking. The difficulty in this case was that it was not one particular pumper but many who were pumping brine, and the law admitted its inability to say who, under these circumstances, had either purloined the rock-salt or in doing so had caused the consequent surface damage; and just as a schoolmaster when he cannot find out the real delinquent in any case punishes the whole school, so the Legislature proposed that the whole of the brine pumpers in a certain area should be taxed to pay for the surface damage to the proprietors who were injured by their joint operations.

A Bill was introduced into Parliament for that purpose

called the Brine Pumping (Subsidence) Bill. Indeed, there were two attempts in that direction. The first Bill failed, but the second succeeded and became law. In the first there was some remarkable geological evidence. A gentleman of experience was called and said that the brine pumping did not cause these subsidences, for he said the fresh water gets in at the edge of the basin at the outcrop of the rock-salt and gets fully saturated with salt long before it comes to the pumps of the manufacturers. But, however ingenious, the evidence was not convincing, and ultimately, as I say, an Act was passed which laid a tax on those who were extracting brine from the earth in a certain district for the benefit of those whose property on the surface was injured by subsidence.

When you have to deal with underground water there is a great opportunity for the scientific use of the imagination. Thus in one case it was given in evidence that the abstraction of water from under the London clay, which was said to lower the level of the water in the water-bearing strata underneath London, could not have that effect, for by pumping water from below the London clay you were only dipping into a hidden river, and if you did not take the water by means of your deep wells it would flow into the Thames at the various springs along the river at Crays. In the same way the Bristol Water Company proposed to pump water from two wells and also to take the waters of the Langford and Rickford streams for the further supply of Bristol, and asserted that in taking the waters by means of the proposed wells they were not injuring the opponents of their Bill and were not lowering the level of the water, because if they did not pump the water it would all find its way into the sea at Weston-super-Mare, and that their pumping would only prevent the good water from being wasted in the sea. But that evidence did not convince, for the pumping part of the scheme was rejected; the Company, however, were allowed to take water from the streams when the flow amounted to a certain number of gallons in the day.

But on all such geological or hydro-geological evidence

the conflict is very considerable. The strata are full of faults or cracks which are shown on the geological survey maps by white lines, and these, whether they are up-throw or down-throw faults, whether they are water-tight faults filled with "leather colt," as it is called in some districts, or not, whether the map shows all the faults that exist, and other matters, are questions upon which these very expert witnesses delight to expatiate. There are, too, expert witnesses who come and give evidence upon the effect upon the fishing of taking the waters of a stream, and whether it is necessary to have a fish pass, and how, if it is necessary, it should be constructed. Indeed, the Parliamentary counsel ought to know everything to be able to deal with the various witnesses which come before Committees, for in one day one may be dealing with sulphur compounds in gas, the proper voltage of electricity for house illumination or tramway traction, the right allowance to be made to a running railway company which is exercising running powers, the right way to measure the rainfall of a district, and a dozen different matters, and in each of these he has to meet witnesses who are experts in the particular matter under discussion. The man who is what the Scotch call "slow at the uptake" is very useless in such a "variety entertainment," where all these scientific gentlemen are having their enjoyable "turns."

But there is almost as much trouble in dealing with another class of witnesses, which may be called a semi-scientific class, the surveyors and valuers. Here, too, the imagination plays its part. I have before me the record of the evidence of some of these gentlemen in three comparatively small cases. In one the claimant's witnesses said the value of the property was £15,264, the company's witnesses said it was £4,000, and where the award was £9,113. In the second the claimants made the value £4,400, the Company £700, and the award £1,863. In the third the claimants wanted £15,000, the Company said they should only have £4,600, and the Umpire gave them £7,560. These are only illustrations of how in such cases you have to avoid

the Scylla of the claimants or the Charybdis of the purchaser by sailing on an even keel a middle course between the two, or, as it is sometimes called, "splitting the difference." But when it is understood that Solomon's trick of cutting children in two or putting the figures together and dividing by two is a perilous inducement for the expert witnesses on either side to get as the poles apart, and for the one to exaggerate his claim and the other to minimise the value, it will be seen that these processes cannot be relied upon to bring about satisfactory results.

In one case a most experienced valuer, who prided himself perhaps unnecessarily on his conscience, swore in the forenoon that under no circumstances whatever would he advise his client to take less than £10,000 for the property in question, and came back after lunch and said he had settled the matter and his client was going to receive £5,000. That shows that even a conscience can yield to reason. But under such circumstances one can understand that counsel may sometimes be quicker-tempered with the witnesses than they ought to be.

There was a long arbitration between the Great Northern Company and a rating authority as to the rateable value of miles of siding at Edmonton. The question had been referred to Sir Ralph Littler for decision, I appeared with my friend Mr. Montague Lush (now Mr. Justice Lush) for the Railway Company. I do not as a rule refer in these pages to living persons, but when a man gets on the Bench he is dead to the Bar, has, in fact, been translated to that heaven of the profession without tasting of death; and therefore I have my excuse for referring to the Judge. On the Bench he is a mild-mannered, courteous man, a little bundle of robes, a wig and sharp brown eyes; but as a counsel he could, when necessary, bite. In the case I have referred to he was, at my request, cross-examining a large and fleshy witness who had been frequently through my hands and was said to be an expert in rating matters; he had succeeded in making himself disagreeable to the witness and was indeed trampling on him. The fat worm, however, turned upon him and said,

"Remember, Mr. Lush, we're not at the Old Bailey."

"I don't know why we're not," answered Lush.

But, referring to disagreeable cross-examinations, I remember in the inquiry into the Regent's Canal Railway Bill I was "put up" to be impertinent by Mr. James Staats Forbes, who had a "spice of the devil" in him. Sir Frederick Bramwell (Hogshead Bramwell) was the witness and, as I have said before, he was a most admirable witness. But although he was excellent as a witness he had done very little as a constructive engineer. Afterwards, no doubt, he and his partner, Mr. Harris, were engineers for some important Power Bills, and for one sewage scheme, at least; but Bramwell's real forte was evidence. He was very often an Umpire in arbitrations, especially in arbitrations under Section 43 of the Tramways Act. Upon the occasion in question Mr. Forbes suggested that I should ask him what works he had designed or constructed, and being young I acted upon his somewhat cruel suggestion.

"We all know," I said, "your eminence as a witness, but would you tell me what you have done as an engineer? What works have you designed or constructed?"

"Not very much," he answered.

"Can I help you? You designed a floating dock for Bermuda, did you not?"

He assented with a "Yes" that sounded like a grunt.

"And it would not float?"

Again he grunted.

"And you also designed, if I am not mistaken, the Caterham Lunatic Asylum?"

But, as I say, it was Mr. Forbes' doing.

I remember, too, once Mr. Mansergh, a quite solid witness and a most capable engineer, was in the witness stand, for it was a Bill in the House of Lords. He had been speaking of his experience at home and abroad, and amongst others he said,

"I have just come back from Brazil."

"That," said counsel, "is where the nuts come from?" and I believe the question was a quotation from *Charley's*

Aunt, which was "still running," for there was an audible smile and Mr. Mansergh did not continue to enlarge on his foreign experience.

There is one class of witness which is peculiar to the Committee-rooms, and that is the City financier. In many cases where a new scheme like the Outer Circle Railway, which was to authorise the construction of a line round London, linking up as with a tire all the spokes of railways which radiate out from the hub of Central London is promoted—the opponents raise the objection that the money for the scheme cannot be raised, that the promoters have no financial capacity, and suggest that Parliament should inquire into the matter.

It would seem that that argument had in it the seeds of its own reputation, for if a rival company says the money cannot be raised and it is true, then the line cannot be constructed and will do no harm to the petitioner. But any stick is good enough to beat a dog with, and any suggestion is good enough for a petitioner who wants to defeat a Bill.

In many cases Committees have seen fit to inquire into the question of the probability of the capital being raised, and then the promoters are sometimes in a difficulty. In the old days there were what were called "subscription contracts," in which there were the names of persons promising to subscribe to the capital of the company, and these contracts were put before Parliament. But they were worth nothing. The promises were conditional, and as they bound nobody the subscribers were generally men of straw who had nothing, meant to subscribe nothing, but put down their worthless names for very large sums. That came to be so much of a financial farce that it was given up, but even after the Subscription Contract had ceased as a bogus institution the inquiry as to the probability of the capital—sometimes hundreds of thousands, sometimes millions of pounds—being raised was still not infrequently gone into. That being so the promoters tried to get some good money-sounding names to insert in the Bill as the first directors and often induced some banker or stockbroker or others to come

from the City, who said they thought well of the scheme, and on the evidence which had been given of the probable traffic they felt confident, if the Bill passed without any serious alteration, and if the capital were offered to the public at a favourable time, that the money would be subscribed.

Now it is obvious that as this was only a prophesy—and pretty safe at that—it did not carry the matter far, but still if the gentlemen who came had names which stood for money in the City the evidence did convince some Committees, just as the old Subscription Contracts with their fraudulent compilation had, I daresay, in the old days persuaded Parliament.

But of all witnesses it may be said that their value depends a great deal upon how they are handled by counsel. Once there was a man who practised at our Bar occasionally who, although he was not bad looking, had a cross face and an angry manner. Even with his own witnesses he seemed inclined to drive rather than lead, and I remember a distinguished engineer, after he had been examined by the gentleman in question, who was my junior in the case, came to me and said,

“I’m afraid I made a mess of it, but I could not make out what Mr. — wanted to be at. He kept on scowling at me until I did not know whether I was on my head or my heels.”

Counsel, especially young counsel, are apt to think that examination-in-chief is an easy art, while cross-examination tries the mettle of a man. That is a mistake. Examination-in-chief is not only difficult but very important, and in many cases cross-examination of a witness does more harm than good. Witnesses sometimes lie in ambush during their “direct examination,” as it is called in Ireland, and are ready to spring upon you in cross-examination. If in such a case you refuse to cross-examine all this bottled venom becomes useless and goes bad. No, the good examiner and cross-examiner is like the good mistress who does not get bad servants who are always going at the end of the month—and they do not get bad witnesses. But counsel must learn on occasion at least to be friendly with the witness. If the

witness feels at home he will give you more than if he feels himself like "bubble reputation" at the cannon's mouth. I am sure more is to be done by coaxing than by bullying, although sometimes by a "horrid front" you can get admission out of weak, trembling knees. But witnesses are men and women, and must be treated like human beings—like the undergraduate to whom Jowett bowed, for, as the great man said, "After all, he is one of God's creatures."

But there is no rule for their examination or cross-examination which is applicable to every witness; each witness requires his or her own treatment, and it will not do to treat all the witnesses to the same dose as they treated all the boys at Dotheboys Hall to sulphur and treacle.

There was a legend in existence at one time that whenever a lie was told a cock crew. The derivation of the tradition is obvious. Upon one occasion this legend was being mentioned and someone said if that is so how do you account for the fact that cocks mostly crow about three or four o'clock in the morning?

"That"—and the answer is ascribed, I do not know whether correctly or not, to Mr. Chamberlain—"is owing to the fact that at that hour the morning papers are being published."

From what is said about the evidence of experts one would be led to expect that the Palace of Westminster would be as resonant as a plentiful farmyard. But one must give the experts their due—as we would their ancestor in the direct line. Some of them, no doubt, like to talk over the heads of the tribunal; some are very certain where modest doubt would be more becoming; some may even justify the echo of the cock-crow; but some make most excellent and enlightening witnesses, and in all that I have come across there is something which may be called a conscience.

I remember one, whose name, as he is still alive, I will not mention, who for two or three days in a long inquiry into the electric supply of London gave evidence which was clear and cogent and who in the long "obstacle race" in which he was

chivied by a dozen counsel never fell, but acquitted himself—even to the admiration of his pursuers.

Talking of witnesses, I may say it is not often the good fortune of Parliamentary counsel to have lady witnesses to examine or cross-examine. Once, however, I was exceedingly fortunate. A great Water Company promoted a Bill to enable it to purchase land and construct works for the further supply of the important town it served. Amongst the lands to be purchased for the purpose of constructing a large reservoir it was proposed to purchase a shooting-box and about sixty acres, which were situated near the pure source of a north-country river. It was the property of a gentleman who, besides the shooting-box and the sixty acres, was the owner of two large hill-farms close to the lodge which extended to about 5,000 acres. But he was also possessed of a wife who was so attractive as to make a most excellent witness. I had the honour to appear for the owner, but I claim none of the credit for the result.

The Water Company made out a case for their Bill. They required more water; the upper waters of the river which they proposed to appropriate were excellent in quality, for they came from the "hills of sheep," and there was an excellent site for a reservoir near the lodge. It was not likely that a single landowner, however good looking his wife might be, would succeed in throwing out the Bill. Still, we did our best. We put the lady into the witness chair. The Bill trembled! But she did even better than her looks. She said she had a great affection for the shooting-lodge. It was there she had spent her honeymoon. The place was dearer to them than their big house at S——. She had planted most of the shrubs which led a struggling existence against the high winds which came blustering down from the hills.

The Bill was before a Committee of the House of Lords, and their lordships were certainly sympathetic and very much impressed by such compelling evidence. When it was counsel's turn to speak on his case, with his client's consent, of course, nay, with her eager approval,

he admitted that a case had been made for the Bill—candour is often useful—but he appealed to their lordships to protect his clients. He told them that under the general law, when a company took part of a house or a manufactory they were compelled, if the owner wished it, to take the whole, and he asked them not to allow this Company to come and pluck out the eye of the estate and leave the bleak farms on his clients' hands, but on the analogy of the section he had mentioned to make them take the whole. As I say, I claim no credit for the result. The battle was won by the witness, and the Lords passed the Bill with a clause in it compelling the Company to take the whole 5,000 acres—which, of course, they did not want.

The question as to what the Company was to pay for the estate went before a well-known arbitrator—who was still young—and you may be certain that counsel for the claimant led off with his best trump card, and called the lady ! Again the result of the arbitration was eminently satisfactory, and that shows what can be done by a really good witness.

CHAPTER XIX

ARBITRATIONS

Arbitrations Political and Legal—Splitting the Difference—The Surveyors' Institution—"A Gold Mine" and Lord Brampton—The Peace Agreements between the South-Eastern Railway Company and London, Chatham and Dover—Standing Arbitrator—Lord Watson—Counsel in the Pritchard Poison Case—Mr. Penny's Evidence—Arbitration before Lord Robertson—Payment by "Lump Sums"—Lord Robertson when at the Bar—A Dublin Arbitration—Slighting the Irish Bar—The Remuneration of the Arbitrator—Arbitration Between the Great Western Railway Company and the Metropolitan Railway Company before Lord Herschell—His "Findings"—Arbitrations in South Africa—The Lawyers' Delay—Counsel for Rand Water Board—Water Companies of London Arbitrations—New River Company and its King's and Adventurers' Shares—Important Legal Point—In Court of Appeal and in House of Lords—Marylebone Borough Council Arbitration—Derwent Valley Water Board Arbitration—Went to High Court, and Again to Parliament—A Racecourse Case—A Market Without Metes or Bounds—The Injury to Chatsworth by Pipe Through the Park—Temple Newsom Lands taken for the Disposal of Leeds Sewage—The Reinstatement of an Electric Lighting Generating Station—The *Morning Post* and Strand Improvement—The Elevation of the London and North-Western Railway Company's Main Line—Arbitration as to the Compensation.

I HAVE been in a considerable number of arbitrations in my time. Arbitration, as a method of untying either political or legal knots, has had a great vogue in the peaceful times which came before the war. It is possible that in some of these matters a similar result would be got by

sortilege or the "heads or tails," of a small coin, for in many cases the tribunal, whether it consists of a single arbitrator or of two arbitrators and an umpire, satisfies its judicial conscience by a compromise. It is a quite easy sum in arithmetic, as we have seen, to put the figures of a claimant's witnesses and the figures of the purchaser's witnesses together and divide by two. Still, it may seem ungracious for one who has profited by this curious method of arriving at justice to gird at it.

The Surveyors' Institute in Great George Street was the place where most of these arbitrations were held in the old days. Upon one occasion counsel was standing—it may have been for the last "whiff" of a reluctantly abandoned cigar—at the door of that institution, when Lord Brampton, who, when he was at the Bar as Mr. Hawkins, had had a large practice in what are called compensation cases, was passing. His lordship, with glittering memories, genially said,

"Ah, going into the gold mine?"

But the gentleman addressed, with his mouth watering no doubt for some of the relishing cases which Hawkins had enjoyed, answered, "Not a gold mine now, my lord. You emptied it."

But even in my time there were some scrapings left, which were to be procured by diligent mining in that lucrative quarter.

It was a bad day for the Parliamentary Bar when Sir Edward Watkin and Mr. James Staats Forbes ceased to be the presiding geniuses over the turbulent destinies of the South-Eastern Railway and the London, Chatham and Dover Railway Companies. The rival ambitions of these great railway magnates, as they were called, had stood us in excellent stead. It was also a bad day for us when the Caledonian Railway Company and the North British Railway Company buried the hatchet and entered into a peace agreement for fifty years. I remember I went down to Edinburgh to settle the agreement in the interest of the North British Company, but I felt as if I was attending my

own funeral. Under the agreement there was a standing arbitrator appointed to settle any dispute or difference between the parties, and in my time I think we only had one small matter which, under that article in the agreement, came before the standing arbitrator. At that time Lord Watson was the standing arbitrator, and the matter that was referred to him was of quite minor importance; but the arbitrator himself deserves a word, for, as a Lord of Appeal, he made a considerable reputation.

He was a middle-sized man, thickly built, with a thoughtful face fringed with side-whiskers and a chin beard, as you can see still from a portrait with one side of the face in deep shadow, by Sargent. Occasionally in his speech you could detect that he came from the other side of the Tweed, but that to me was pleasant, for it reminded me of home. I first saw Watson in the trial in the High Court of Justiciary in Edinburgh where he was appearing for the Crown in the trial of the medical poisoner, Pritchard, of Glasgow. One remembers the trial principally because of the remarkable series of experiments which had been made on living animals by a chemist (a Mr. Penny) to find out what Pritchard had put into the bottle of Batley's Sedative Solution which was found in the room in which his mother-in-law died, and which seemed to establish the fact that Pritchard, with some ingenuity, knowing that his victim was in the habit of taking these "drops," added to her ordinary sedative a poisonous dose of aconite. Batley's Solution, a patent medicine, was proved not to contain aconite, but the bottle which was found caused the deaths of rabbits and guinea-pigs with symptoms which were different from those produced by the patent drug, but which were identical with those produced by Batley's Solution when aconite was added to it.* Pritchard was hanged, and Mr. Penny hanged him.

When I saw Lord Watson again it was in a case in the

* They do things thoroughly but gruesomely in Scotland. In relation to the trial for murder of a man who was accused of killing a Mr. Hambro at Ardlamont Sir Henry Littlejohn had out corpses and shot at them with guns, that he might study the effects of gunshot wounds.

House of Lords when the question was whether clay was a mineral according to the law of Scotland. The House held that it was a mineral, but in England the Dictionary Courts have held that it is not. The last time I saw his lordship was in the small arbitration that I referred to, and there was nothing remarkable about it except that Lord Watson refused to take any fees for his services as an arbitrator, a self-denial which was not practised by others of his colleagues.

While referring to the disagreeable subject of fees, I may refer to a case I had before Lord Robertson. He was a little man with a big head, and a confidence which in the young would be called "uppishness," but which in a Peer of Appeal I suppose deserves a more temperate euphemism. "Pert" would be beneath the dignity of the House. He was neat in person and neat in mind, and he had a considerable reputation as a speaker in the House of Commons before he was raised to the Bench as Lord Justice General. We were associated as students at the Edinburgh University, for we were both on the committee of undergraduates who were working to secure the election of Disraeli as the Lord Rector as against Thomas Carlyle, an enterprise in which perhaps it was fortunate that we failed, for Carlyle's address to the students as Lord Rector after he was elected was one of the greatest speeches ever made by a man who had scarcely ever spoken in public. But after that, of course, I saw nothing of Robertson, although one heard about him. One of the things I heard about him may be worth recalling.

There was, practising as a surveyor and valuer in Scotland, a Mr. Binnie. He was bland and unctuous, and had a way of summing up his evidence like a minister in a pulpit. On one occasion when he was about to sermonise, Robertson said,

"Mr. Binnie will now pronounce the binediction."

In Scotland they have a way of asking witnesses their ages, and with a want of gallantry which one would deprecate they even insist upon having the ages of women witnesses. On one occasion when Robertson was counsel in

the case, a fashionably-dressed woman, still young, was put into the witness-box, and she naturally objected to answer the question openly, but said she would write it down. As she had her gloves on she took a moment or two over the paper, and Robertson said,

“Come away, Lady B——, it can't run to three figures!”

He ceased to be President of the Court of Session on the death of Lord Watson and succeeded him as Lord of Appeal in the House of Lords. It was after he had come to London that a very complicated dispute between two railway companies who had been on very intimate relations which had got tangled into a considerable knot was referred to Lord Robertson as arbitrator, and it was arranged that he should sit from day to day in the board room of the Lancashire and Yorkshire Railway Company, who, although no party to the dispute, had kindly placed their offices in Great College Street, Westminster, at our disposal. I mention the case because in connection with it I might have been accused of having contravened an unwritten rule of the Bar. It is not usual for counsel to take “lump sum” fees, although under exceptional circumstances, like the defence of the Gaikwhar of Baroda, Ballantyne was said to have received 10,000 guineas, very little of which sum, it is also said, returned with him to this country. The ordinary method of remuneration is to mark a fee on the brief and pay a refresher for each day the case continues. On this occasion, however, the solicitor for the Railway Company for which I was going to appear with Mr. Honoratus Lloyd, approached our clerks and said that he thought the case could not last more than ten days or a fortnight, and asked us to accept a fee for the whole case to cover brief and refreshers. I forget how it came about, but the sum agreed on was 1,000 guineas in my case and a proportionate amount for my friend Mr. Lloyd. The arbitration involved some very complicated points and the case was opened by Mr. Cripps (now Lord Parmoor), who was on the other side. I do not recall any of the matters in dispute, for the case lasted such a short time that they were not impressed on my memory. I

think it was the second day of the hearing before Lord Robertson we came to terms and settled the matter, and I am not sure, but I think the Railway Company that we represented regretted the "lump sum" arrangement that they had made with reluctant counsel.

In another arbitration before a noble lord who is, I am glad to think, still alive, and whose name I will therefore not mention, we arrived at an untimely settlement. He sat in the Shelburne Hotel, Dublin, to hear the evidence and the speeches of counsel. I got into some disgrace with the Dublin Press in connection with a remark I made in opening the case. I was assisted in the matter by three learned colleagues, one a member of the English Bar and two members of the Irish Bar. But Mr. Campbell, at present Attorney-General for Ireland, who was leader for the other Railway Company party to the dispute, had no fewer than five other counsel associated with him. In opening the case I told the arbitrator that I appeared with So-and-so for the ——— Railway Company, and that we had opposed to us "the whole Irish Bar." It was this harmless baby of a joke that made the newspapers angry, and they attacked me for sneering at the Irish Bar and the Four Courts. It was almost raised to the level of another wrong to the Sister Country, although my friends on the other side, I think, understood it. But I mentioned this case for another purpose. It might, with all these counsel, have gone on for any length of time, but on the second or third day Mr. Campbell and I settled the matter to the satisfaction of both our clients. When this fact was announced to the noble lord, the patient tribunal, he congratulated the parties on the happy issue, but called me aside and said,

"It's all very well, but where do I come in?"

So I went and conferred with my opponent and it was agreed that his clients should pay his lordship £250 and that my clients should pay him a like amount; and we thought that £500 was not inadequate remuneration for a pleasant trip to Dublin. I went back to the arbitrator and

put an end to his fears by telling him what we had agreed. He seemed quite satisfied, but said,

“ And what about B—— ? ”

“ Who is B—— ? ” I asked.

“ Oh,” he said, “ he is my secretary.”

Now, a secretary was an ornamental but unnecessary appendage to the arbitrator, but I went back to Mr. Campbell again and he agreed that his company would pay Mr. B—— twenty-five guineas, and I agreed that my company should pay a similar amount ; and I believe in the end everyone was satisfied except perhaps the numerous counsel, who were not in that case paid by a “ lump sum ” and who had been looking forward to a great number of pleasant refreshers.

While I am referring to noble arbitrators, or arbitrations before noble lords, I should like to recall what took place in an arbitration between the Metropolitan Railway Company and the Great Western Railway Company before Lord Herschell. The difference between the two Companies arose in connection with traffic handed over at Bishops Road station, traffic over the two additional lines provided by the Great Western which dip under the main line east of Westbourne Park station, traffic over the Hammersmith and City line to Victoria, and other matters. The issues were complicated and the hearing before Lord Herschell must have taken about a fortnight. It was suggested that the learned arbitrator should, before issuing his award, follow a quite useful Scotch practice and issue “ proposed findings,” and give the parties an opportunity of coming before him again before he settled his award. This commended itself to his lordship, and after the evidence and the arguments were completed he took time, and in about a fortnight we had another hearing to discuss his “ proposed findings.” I had to submit to him that he had made a mistake both in fact and in law in his findings. He was really very angry, so much so that Mr. Cripps, who was also going to raise some point on the findings, dropped his point and only looked on with interest. I said that as to the point of law, if he decided it as he proposed, I should have to ask for

a special case for the opinion of the High Court ; and to make myself as offensive as I could I said it would go before a divisional court consisting of Mr. Justice —— and Mr. Justice ——, and I picked out the names of two of the weakest judges on the Bench. This made him angrier than ever. His face with its dark hair and eyebrows became congested and he rose and adjourned the hearing.

Now this is why I tell the story. A fortnight afterwards the hearing was resumed, and he admitted that on both the matters I had raised he had been wrong, and that he would alter his final award accordingly. Now, I think it was exceedingly good of him and brave to come back and admit his error, especially after he had sealed it with the burning sealing-wax of anger.

I hate to hear the "chink" of money in books like this, but I must mention one fact in connection with an arbitration which is unique in my experience. I went to South Africa in connection with the arbitrations to determine the purchase price to be paid by the Rand Water Board for the undertakings of the Johannesburg Water Company and of the Consolidated Gold Fields of South Africa. Mr. Worsley Taylor had been appointed Umpire in these arbitrations. We had every reason in these matters to complain of the law's delay, or the lawyer's delay. When we arrived in Johannesburg, counsel on the other side, Mr. Ward (since made a judge) and General Smuts, who were appearing for the Rand Board at the first sitting of the Arbitration Tribunal, applied for a long adjournment. If it were not granted they said they would have to throw up their briefs, for they were not prepared to go on. They required the presence of a witness or witnesses from England who had not yet started, and there were various other irrelevant excuses. It was all very well for these gentlemen to have delays and postponements, for they were at home and could go on with their ordinary practice, but with regard to the Umpire and myself the postponement was anything but agreeable. However, after an adjournment of some weeks we did get to work, and the first case—that of the Consolidated Gold

Fields—was quickly disposed of. The heavier claim of the Johannesburg Water Company was the next case in order, and I—for the Company—with my learned friend, Mr. Leonard, who had been in the Jameson raid, and Mr. Balfour, opened the substantial claim of the Company and we proceeded with our evidence.

There was a third Company's undertaking which was also being purchased by the Rand Water Board, and that was the Bramfontein Water Company's works. I was not briefed in that matter and I believe Mr. Leonard led for the Company. One day, soon after I had opened the case for the Johannesburg Water Company, I received a letter from the solicitor to the Bramfontein Company in which he said that the directors of his Company regarded the speech I had made for my clients as so important in the interest of his Company that they asked my acceptance of the enclosed cheque for 200 guineas. I say such a thing is unique in all my experience. I had done nothing but open the best case I could for my own clients. It was possible that the principles which were to be applied in the valuation of the one undertaking bore upon the valuation of the other. But to find that there was gratitude in a company because what I said might have some indirect effect upon their case was not a little astonishing. I would as soon have thought of being grateful to counsel who had argued the great principles of law involved in *Coggs v. Barnard*, or any other leading case.

But the delays went on as well as the case, and the inquiry into the "maintainable revenue" of the Johannesburg Water Company was not concluded when I had to leave on my return journey to England; and my juniors were left to finish the case while I was proceeding to the north followed by two interested albatrosses—and spending my Christmas Day on board the *Carisbrook Castle* and encountering a genuine hurricane in the north of the Bay and the mouth of the English Channel.

Hitherto I have been dealing rather with the fringe of arbitrations than with the arbitrations themselves. Indeed,

this is not the place to go into the questions involved in such litigious disputes, but it may be worth while to give the reader some idea of the kind of questions which are submitted to arbitrators, and the nature of the disputes which have to be dealt with by counsel.

In the arbitrations which took place between the Water Companies of London and the purchasing authority, the Metropolitan Water Board, the Court consisted of Sir Edward Fry, Sir John Wolfe Barry, and Sir Hugh Owen, and many important questions arose in determining the value of each of the eight Companies undertakings. By far the most important was the question in connection with the New River Company. That Company, which had been formed for the purpose of bringing water from the springs of Chadwell and Amwell in Hertfordshire to London by Sir Hugh Myddleton in 1613, existed under both a charter and an Act of Parliament. The property was divided into seventy-two shares; thirty-six of these were called Adventurers' shares which were held by Myddleton and others, and thirty-six had been given to the King, and were called King's shares, in consideration of his assistance. That was in the time of James I. Charles I. in 1631 relinquished the King's shares for an annuity of £500. It is perhaps interesting to remember that Adventurers' shares were in 1634 worth £3 4s. 2d. each, but that in 1897 one of these shares sold for £125,000. In determining the value of the undertaking a good deal turned on the question whether the dividend on the shares was limited, as in the case of other companies, to 10 per cent., or whether under the charter the company had a right to divide a dividend only limited by its earnings, which were procured not only from the sale of water but from the rents of its lands, which were worth nearly half a million. Up to the time of the arbitration everyone, even the County Council, had assumed and admitted that there was no limit to the New River Company's dividend, but Sir Edward Fry's award proceeded upon the decision that under the true construction of the Act and charter the Company's dividend was limited to 10 per cent.

There was an appeal on a question of law to the Court of Appeal, and of course on a matter of such vital importance we went there. The Court of Appeal decided that Sir Edward Fry was wrong. The judgment of the Master of the Rolls and two Lords Justices was that there was no limit to the dividends that could be divided. The Water Board appealed to the House of Lords, and the House of Lords, by a majority of three to one (the dissentient lord being Lord Halsbury), reversed the Court of Appeal. It was a bad day for the holders of King's or Adventurers' shares, but the curious part of it was that we for the New River Company had had four competent lawyers saying we were right while four competent lawyers said we were wrong, and that the result all depended on the shuffling of these Court cards.

In another arbitration before Mr. C. A. Russell, K.C., the Metropolitan Electric Supply Company claimed a large sum from the Marylebone Borough Council for that portion of their undertaking which was in the borough, which was to be transferred to the Council, and for the very serious injury which would result to the Company from the severance of that portion from the rest of their undertaking. After a long and intricate hearing the arbitrator awarded a sum of £1,200,000, which opened the eyes of some of the eager ratepayers in Marylebone. In another arbitration, where again Mr. C. A. Russell was the arbitrator, the question to be determined was what proportion of the whole expenses of the Derwent Valley Water scheme, which had been incurred by the Board for the land for the reservoir, for the works and the conduit down towards Leicester, should be borne by Sheffield as one of the constituent authorities. Mr. Russell took a view of the construction of the section, which was, according to Sheffield, entirely contrary to the agreement between the various towns, and upon which the Act was founded; and when they had failed to show in the High Court that his construction was wrong they promoted a Bill to set the matter right. After a failure in the first session and a threat to renew the application to Parliament, the

matter was arranged by a give-and-take arrangement which put an end to acrimonious and expensive litigation.

I only mention these matters to show the variety of the matters that are dealt with by these lay Courts. In one case, a very sporting case, we had to deal with the purchase of the Manchester Racecourse when the site was required by the Ship Canal Company for the construction of a dock, and had to study the rules of the Jockey Club.

In another we appropriated the Pomona Gardens, which had been a kind of provincial Vauxhall or Cremorne, and had to ascertain the value of that with its "variety" entertainments. In a recent case the purchase-money of a market without metes or bounds, that had a franchise for a market two days a week, had to be ascertained, and although the inquiry was loaded with learning I have no doubt the arbitrator arrived at a sound conclusion.

The Derwent Valley Water Board had laid one of its great conduits through the park and close to the terrace upon which Chatsworth stands, and the Duke of Devonshire claimed compensation. The claim, however, was not arbitrated upon until some years after the works had been completed and the trench where the great pipe was buried had been grassed over, and there was none of the annoyance then which must have been caused during construction while there was a railway through the park and locomotives which snorted and when they were not doing that whistled, and when there were armies of navvies going about. When the Arbitrator viewed, all

" Seemed as peaceful and as still
As the mist slumbering on yon hill,"

to quote two of Sir Walter Scott's jingling lines. It is well to time your arbitration.

In another case the town of Leeds took some property for its sewage disposal works out of the Temple Newsom estate which belonged to Mrs. Meynel Ingram. Perhaps that is why Scott's lines from the *Lady of the Lake* came into my head, for Temple Newsom is said to be the Temple



LORD JAMES OF HEREFORD (SIR HENRY JAMES, K.C.)

Stowe of his *Ivanhoe*. To what base uses may the precincts of a fine old mansion and estate come. Not only may Cæsar's dust stop a draught, but the estates of Knights Templars be used for sewage disposal! That matter was referred to and decided upon by Lord Robert Cecil.

The London County Council in carrying out the Milbank improvements removed the important works of a great Electric Lighting Company. When they got the Parliamentary powers it had been enacted or arranged that instead of ordinary compensation there should be given to the Company the costs of reinstatement. Of course it is obvious that in the case of some of these undertakings the persons or companies whose property is taken do not desire to discontinue their undertaking, but wish to continue it, and when that is the case—as was the case when there was a disturbance of the *Morning Post* office under the Strand Improvement Act—it is better for the person ousted and for the corporation having the powers to dislodge that they should be at the expense of reinstating the industry rather than paying compensation for its destruction. In the case in question a new site was found for the Company not very far from where they had been on the river, but the new site in Horseferry Road involved not only the erection of a new building, the installation of plant and machinery so that it might all be ready to supply energy before the old works were pulled down, but it also involved a rearrangement of innumerable cables and mains and the construction of a pipe to get water to the works for condensing, and a dozen other things. Of course the problem was a difficult one, for the Company in building a new generating station would not desire to make merely a replica or facsimile of the one they were made to abandon, but would, having learned by experience, put into the new station appliances which were in some senses better than the old.

In this case Mr. Simon (now Sir John Simon) was the arbitrator; and Sir Edward Clarke—it was always a pleasure to have such a fair-minded man for an antagonist—acted for the London County Council.

One more illustration and then I must leave my arbitrations. When the Ship Canal was constructed it was necessary to make a high level bridge to carry the main line of the London and North-Western Railway over the canal at such a height as to allow the ships from the sea with masts to pass along the canal. Of course this involved the construction of a steep incline, which began close to Warrington station, to the bridge, and all the trains running south had to negotiate that incline. They got to some extent an advantage by reason of the run down on the other side, but according to the Railway Company in the arbitration before Lord Balfour of Burleigh to determine what the Canal Company was to pay the Railway Company for thus injuriously affecting it, every train would require to use I forget how many more shovelfuls of coal, and these extra shovelfuls totalled up to an immense sum of money, and that was what they claimed. What they got I have quite forgotten.

As I am mentioning the Ship Canal I may refer to the Barton aqueduct. Not only had railways to be carried over the Ship Canal, but the Bridgewater canal a few miles to the west of Manchester had also to be carried over the Ship Canal. It was at such a level that it would have been impossible to carry it over upon a permanent structure, so the engineers turned the Bridgewater canal where it crossed the ocean waterway into a swing canal. The canal at that point was put in a metal box which was pivoted on a central pier which jutted up from the Ship Canal, and when ships were passing on the latter up to or down from Manchester the whole of the Bridgewater canal was turned round, the water being kept in the box by a kind of gate, and so the Bridgewater was got out of the way of the big ships. But as the Bridgewater canal had been purchased by the Ship Canal Company there was no arbitration about that, alas !

CHAPTER XX

NO MEAN CITY

Extension of the Boundaries of Cities and Towns—The Idea that it should be Cheap and Easy to Apply to Parliament—Private Bills alter General Law—Strong Public Case Required—Opponents put to Expense—Divorce Bills in the Old Days—Facilities for Divorce—Cost of Private Bills very great—Some have Cost Over £20,000 to the Promoters—Some Cross-Examinations Cost Three Guineas a Minute—The Cheaper Provisional Order System—In Small Cases—In Important Matters Three Inquiries instead of Two—The Inquiry into the Extension of Birmingham—The Bill for the Extension of Glasgow—As to the Consent of the Inhabitants of the Districts to be Annexed—Liverpool and Bootle—Plymouth Extension to include Devonport and Stonehouse—Large Communities—Advantages of—Smaller “Nationalities” and Local Self-Government—Town Councillors’ Work on Great Corporations—Will Want to be Paid like Members of Parliament—The Greed that is at the Bottom of such Proposals—Officials’ Salaries—Or Relief of the Rates of the Overburdened Ratepayers of the Central Town—Claim of County from which Rateable Area is taken away—Hartlepool and Caterham Cases—Rates not an Income or Property—No Financial Adjustment as to—The Duke of Devonshire’s Joint Committee Report—A Compromise—The Extension of Cambridge—Application to be made a County Borough and so taken out of County—County Council Objection—County Crippled—Bill Rejected by House on Third Reading.

ONE of the features of the Private Bill legislation of my day has been the extension of the boundaries of our great towns and cities. At one time it was thought that the getting of a Bill through Parliament should not be too easy or too cheap, and there was certainly a sound

principle at the kernel of the idea. A Private Bill alters the general law, and although, unlike a Public Act, it does not affect the whole or a very large number of His Majesty's subjects, it does affect the rights of certain classes of the community and of certain individuals situated in certain districts. For instance, a Railway Bill abrogates the law upon which certain proprietors hold their land ; it legalises indictable offences like the obstruction of a highway. A Corporation Bill may take from an owner a right to build upon his own land where he pleases by prescribing a building line, and by making all sorts of harassing bye-laws may put obligations upon him as to any building he may erect. All these things may be in the public interest, but they are infringements of proprietary rights, and these infringements, it has been felt, should only be sanctioned when a strong public case, a case of public necessity, has been made out for the Bill in question. It is a sound principle that the altering of the existing law—the abrogation of existing private rights—should not, even when it is done after “great argument,” to apply Shakespeare's words to the proceedings in Committee, be made too easy and cheap for the promoters of Private Bills, for even the opposition to and resistance in Parliament may put private persons to very considerable expense—and the wanton promotion of such Bills ought not, it is felt, to be encouraged.

At one time divorces in this country could only be obtained by means of a Bill in Parliament, but the attitude of this country with regard to marriage and marriage laws has been very much changed in recent years, and nowadays the legislature has attempted to smooth the way of those who find they have made a mistake at the altar or the registry office. A Court was established to untie these untoward knots. Even more recently a Royal Commission has proposed to still further facilitate those who want to be single again, or who are like the Scotch bridegroom who refused to take “this woman to be his wedded wife,” because as he declared he had since his promise seen somebody he liked better.

So it has been with regard to Private Bills, which are still dealt with by Committees of Parliament. That it was an expensive matter in the old days to promote a Bill for a new enterprise and that it was properly so has been the view of members of the Parliamentary Bar from the beginning, who regarded their fees as a useful deterrent to those who would otherwise have brought applications to Parliament on too frivolous grounds.

But a machine which has to be proud of its own friction, or of the amount of lubricating oil which is used in running it, has only a poor excuse for its continued existence. Fabulous stories as to what has been paid by promoters in connection with Private Bills have been told. It was said that in one case the promotion expenses had reached the enormous sum of £100,000. Certainly in several Bills with which I have been connected the costs of the promoters, without including the expenses incurred by petitioners against the Bill, have come to over £20,000.* It is fair to say that all that money was not expended on counsel's fees. The fees that have to be paid to the House on the deposit of a Bill, on the various "readings" of the Bill, and in other connections, are very heavy, and it has been asserted, I believe with truth, that all the expenses of the upkeep of the Palace of Westminster are paid out of the moneys received in connection with Private Bills. The fact, however, that the expenses in Parliament were very heavy led to what has been called the Provisional Order system. Instead of applying to Parliament for a Bill, we will say, to take in a suburb of an extending town within the municipal limits, it is now possible for a corporation to apply to the Local Government Board under an Act of 1888 for an Order to alter the boundaries of the borough; and if the Local Government Board approves of the application—which they very often do, for they have megalomaniacal ideas as to large towns—they can send down an inspector, who holds a local inquiry

* I have often heard the complaint made when someone was wasting time by painstaking but futile cross-examination that his tardiness was at the cost of about three guineas a minute to the promoters.

and reports to the Board. After that the Board can make a provisional order to alter the boundaries, which, when confirmed by Parliament, becomes law.

This was intended to cheapen the methods of legislation, and certainly in small matters where there is no serious opposition to a proposal the Provisional Order system has worked well and economically. The difficulty was that when the Order was made by the local Government Board or by the Board of Trade it had no effect unless it was confirmed by Parliament, and the proceedings on the confirmation were precisely the same as those upon an ordinary Private Bill. Thus when a local inquiry had been held and had cost a good deal of money—as in the extension of Birmingham in 1910-11—there were certainly twenty learned gentlemen and the proceedings lasted one “jolly” month—the Bill confirming the Order and taking in Aston, Handsworth, Yardley, and King’s Norton into Birmingham was opposed in both Houses of Parliament. In that and similar cases—for example, the recent inclusion of Devonport and Stonehouse in Plymouth—there have, under the “cheap” Provisional Order system, been three inquiries instead of two, and it is therefore not a matter for surprise that many corporations have thought it well to proceed at once to Parliament instead of applying to the Government Department; and when Glasgow applied three sessions ago for a measure to take unto itself great towns such as Govan and Partick, which according to it were buds upon the parent stem, it proceeded by Bill, and although the inquiries in Parliament were long, the Bill which made Glasgow the “second city in the Empire” probably cost less than the confirmed Order which extended Birmingham and made it in its municipal rivalry a larger town than Liverpool or Manchester.

In connection with such extension Bills as I have been mentioning, an interesting point has arisen and has been urged by counsel until it is quite threadbare, and that is whether an alteration of the boundaries of a town so as to include outlying areas, whether these are governed by urban or rural councils or by corporations, should be made

by the Local Government Board or by Parliament against the wishes and without the consent of the inhabitants of the district sought to be annexed.

It is lucky for counsel that in the course of our haphazard legislation there are generally precedents for either of the alternative courses which have to be advocated. On this matter the decisions offer weapons to any hand. Thus, when Liverpool sought to annex the neighbouring borough of Bootle, in which as a fact some of the most modern docks of the port are situated, which was supplied by Liverpool with water and whose streets were continuous with those of the city, and even after the Local Government Board had held a long inquiry into the matter—in which I appeared for the Corporation of Liverpool with Mr. Pickford and Mr. F. E. Smith, both of whom have “gone aloft,” although not in the “Tom Bowling” sense—and reported in favour of the inclusion, a Committee of Parliament rejected the Bill mainly on the ground that the people of Bootle were almost unanimously opposed to the partnership with Liverpool.

But the same arguments were used in the strenuous resistance of Devonport two sessions ago, when it objected to being swallowed by and for the benefit of Plymouth; and although it tried to show that there was no community of interest between the two towns, that the people were opposed to municipal association with Plymouth, and that mere contiguity in space of two towns (such as exists in the case of Manchester and Salford) was no ground for annexation. These arguments did not prevail and the Committees of both Houses passed the confirming Bill.

There seems then to have been a public opinion in favour of creating large communities in the country, partly on the supposed ground of economy, instead of leaving the administration of local affairs in the hands of more local and minutely interested bodies. Of course there is something to be said for the great community. Only a great town like Manchester could have gone to the Lake District for a water

supply, and although it is sometimes said that by combination the smaller communities could carry out even such large purposes, there is always a difficulty, in the present condition of human nature, in which provincial jealousies bulk somewhat large in bringing about such combination, and if it is brought about it is only an admission that combination for all great municipal purposes is desirable, and that is exactly what the extension of a great town is intended to bring about. Whether the new political doctrines of the importance of preserving on the stage of Europe the smaller nationalities and allowing them to govern themselves locally instead of suffering the absorption of these in a world-dominating nation like Germany will have any effect upon the smaller plays that are acted on our local booth stages, it is impossible to say ; but there is, while recognising the advantages which are enjoyed by great communities, something to be said in favour of real local self-government, if you can get the people of a locality to interest themselves in these comparatively small public affairs.

When a small community is merged in the great towns like Liverpool or Leeds or Sheffield, the merger is apt to put an end to the intimate local interest and control which is the essence of local government, and the corporation of a great town is almost as remote from the influence and interests of the mere local constituents as is Parliament itself. There is, too, another aspect in which this may in the future have emerging disadvantages. The work which is thrown upon the Corporation of a town like Birmingham or Glasgow is very great. The time which has to be devoted by members of the Corporation to the work of the Council and Committees is very considerable. Indeed, many of the more enterprising citizens devote almost their whole time to these public duties. Of course that has a look of great nobility. But just as the House of Commons not long ago, without any instigation from the public, voted each of its members £400 a year for his more or less valuable services, so it may well be that members of municipalities may in the near future ask to be remunerated for their services on an equally liberal

scale ; and just as the salaries of Members of Parliament will in time make a class or profession of politicians who will choose that somewhat useless rôle instead of one of the more useful professions for his walk in life, so in our great towns the men of affairs will probably devote themselves to their own business and we have a professional class who will live, or hope to live, by grinding the axe of the public in the Corporation and at the same time by grinding some private and possibly less reputable axes of their own.

We have been dealing with this matter upon the high plane of politics, but after all a good deal of what we call policy is nothing but greed. In some cases the extension of boroughs is set on foot by officials who see what they regard as a legitimate way of adding to their duties, and as a consequence to their salaries. But even when the proposal is the result of a real town ambition it is very often dictated by a shrewd calculation as to the financial results of the proposal. If a town casts its eye upon the Naboth's vineyard of a residential suburb you may be pretty certain that its desire is to add the rateable value of the houses in that district to its own rateable value, and so to some extent to relieve its own ratepayers. This, by the ratepayers of some of these large towns, whose pockets are continually invaded by the cruel hand of the rate-collector, is regarded as a high and wise policy, but it does not commend itself to the residents in the villas who have been lightly rated to the county in the past and are going to have their rates increased when annexed to the borough. There is no altruism among ratepayers.

But this system of municipal greed has led to some curious results. The poor ratepayers in their villas had to grin and bear it, but not so a belligerent County Council. The county from which an area was taken, seeing that the area annexed was a populous area with good houses of considerable rateable value in it, protested that they had suffered a loss of rateable area and were entitled to be compensated for it. This argument was raised in certain cases where the extension of a borough or the cutting out of an area from a

county had taken place. But wherever that did occur an Act of Parliament provided that there should be what is called a financial adjustment between the borough which got an area and a county which lost it, and Parliament had too, with an uncommon look of justice, enacted that neither the county nor the borough was to be in a worse financial position than it was before.

Now as the whole mainspring of the machinery which was set in motion to bring about the change was the greed of one community, and the resistance of it was due to the greed of another, it was a somewhat strange provision. But the Courts of Law soon in the Caterham and Hartlepool Cases put a more rational face upon it and said that rateable value and the right to receive rates from a community was not an "income," or a "property," and therefore that it was not a matter for adjustment; or in other words that in such a case where for public reasons a community had been deprived of rateable area—which in such cases was usually called the "milk cow"—there could be no compensation for the loss of rateable value.

This so far was a triumph for the boroughs. But the counties began to pull strings, and the puppets at the end of them were powerful enough to get the Government to appoint a Joint Select Committee of the two Houses to inquire into the whole matter, and the Duke of Devonshire was the Chairman of that Committee. The inquiry took place. Witnesses and counsel were heard and the Committee's report compromised the matter. The community which had lost area by reason of the transfer—if it could show that its ratepayers had to bear an increased burden—was to have compensation, but in no case was the payment to be more than fifteen years' purchase of the burden so measured. So this great controversy was laid to rest. But even now when the proposal is to cut an area out of the county either by a Borough Extension Bill or by turning a borough into a county borough, the counties go upon the war-path. Indeed, they sometimes go successfully. Cambridge applied to the Local Government Board for an extension of its

boundaries with the view to get within its ambit a population of more than 50,000 which would enable it to apply to have another step in the peerage of communities, and to be made a county borough. It succeeded in getting the extension, although the county opposed, and then applied to be made a county borough, the effect of which would have been to cripple the county of Cambridge, to deprive it of half its rateable value, and to leave it in a condition in which it would be unable to carry out the excellent administrative work it had admittedly been doing. Still, a Committee of the House of Commons passed the Bill by the casting vote of the Chairman, but the House of Commons itself threw out the Bill on the third reading.

CHAPTER XXI

SOME OF MY JUNIORS

Debt to my Juniors—Their Loyal Help—Illustration of the Use of a Junior—Wightman Wood in a Water Bill—The Reply—Debt to many Men who are still at the Bar—The Fussy Junior—Incidents—The Fault of Vanity—Have been most Fortunate in my Juniors—Mr. Batten as a Junior—Director of many Companies—Sometimes a Thorn in the Side of a Great Railway—Some Letters to me from my Juniors who are still at the Bar.

IN these reminiscences I have spoken at considerable length of some of my leaders, and I hope with adequate respect and admiration ; but I would like to pay a more urgent debt, and that is to my juniors. The loyal help I have had from those with whom I have been associated often when I as leader was to be the recipient of the halfpence while the juniors were to have the kicks, has left me, now that I am separated from them, with an acute sense of gratitude.

Let me give you one illustration in which I can, unfortunately, mention the name, for the junior in question has retired even further from the Bar than I have, and is dead. I was briefed as leader in a Water Bill with Mr. Wightman Wood. I opened the Bill to the Committee, and I thought—for I admit I have a certain amount of vanity—I had done it well. After that I had to go elsewhere and had so many matters on hand that I was unable even to look into the Committee-room where my Bill was going on—and going on well, I have no doubt, in the hands of my junior. It was either on the third or fourth day of the inquiry that my clients caught me either in some other Committee-room or on the racecourse of the Lobby, in which I was “sprinting ”

from one room to another, and insisted upon my coming in and replying on the whole case. I admit I had some diffidence in replying on a case of which, since the opening, I had only had kinematic glimpses in the daily consultation, but I went into the room and urged Wightman Wood to make the speech. The last of our opponents was, at the time of my ultimate visit, making his violent speech against our Bill. My junior, who knew all that had been happening in these three or four busy days during which I had only been in blindman's touch with the case, said he would prefer it if I made the speech. But what was I to say? He handed me his notes, and I glanced over them while my opponent in his vituperation was as a fact telling me something of the case. I suggested to my clients again that Wightman Wood should make the speech, but they would not take my advice and at that instant my opponent sat down with a satisfied bump. I did reply on the whole case from my junior's excellent notes, and from the little I had heard in the last valuable ten minutes of Bidder's speech; and owing to the excellence of his most readable notes I was able to do it—shall I say well?—at any rate well enough, for when I finished the Committee cleared the room for an anxious five minutes and when we were let in again said the Bill might proceed.

"It was all your speech that did it," said my pleased client.

"It was all Wightman Wood's notes," said my conscience.

Not long after that Mr. Wightman Wood was made a County Court Judge, and I am convinced that it was an excellent appointment.

But that is only one illustration of what leaders owe to juniors; there are many men at the Bar now to whom my debt for help is great.

Of course, as it will be understood, the quality of juniors differs very much. They ought, as Sir Walter Scott said of literature, to be a walking-stick and not a crutch. But some—and perhaps they were the worst—were fussy ones.

I remember one man who would never leave his leader alone. He seemed to think that when his learned leader stood up to examine a witness he did not know enough to ask the man his name, and had to be prompted even in that matter. He was continually on his legs with suggestions, most of which were worse than useless. The wise junior holds his tongue and gets much credit for it. The junior that is always on the boil and is always "lifting the lid" or bubbling over in steam, was on one occasion rather harshly met by an infuriated leader, who turned upon him and said, "Damn it, sir, will you hold your tongue?"

There was, too, in my early days a tall old handsome man at the Bar, and once at the Guildhall he had a junior who thought, as juniors will, better of himself than of his leader, and during the whole of the old gentleman's speech kept pulling at the old man's silk gown as if it had been a bell-rope and whispering what he thought importances into his inattentive ear. When the leader had finished his speech he turned to the importunate junior and said, "My dear young man, I knew all these things before you were born."

But the fault of some juniors is vanity, which is a common growth in youth, but it is a growth that is cut down by years of experience. Of one of them it was said, "In his good opinion of himself he has no rival." I recollect one junior, he was only the third man in the team but he was so desirous of showing off that he said to his intermediate leader that he would give £20 to cross-examine a certain scientific witness. This lavish offer was conveyed to me, but tempting as it was it was not accepted. I cross-examined the witness myself, I daresay to the contempt of the aspiring gentleman who I have no doubt thought he would have done it a great deal better.

But there are sometimes, but rarely, disloyal leaders and disloyal juniors who, if anything goes wrong in a case, throw over their colleagues, who if they are leaders bully their juniors in consultation, or if they juniors sneer at their leaders to their clients, forgetting that in turn their reputations may be undermined in the same way by a

sneak or a mole. But it has been my excellent fortune to meet very few of these. Indeed, my own experience of juniors has been a most fortunate one, and I owe them, as I say, much; and I will say for myself I have never been ungrateful to them for their help. A junior who can be a second memory to his leader is invaluable, and I only regret that in these reminiscences I have what we used to call at the bar "a single-handed brief."

Mr. Batten was one of the juniors at the Parliamentary Bar in my day. He was a little round, podgy man with a face which generally smiled in fat dimples. He was a director of a dozen or fourteen little railway companies, which he made thorns in the sides of their bigger neighbours by means of Bills in Parliament and applications to the Railway Commissioners. It was through these that he got his business at the Bar. It is quite possible that these tactics upon the part of a hornet line were sometimes successful and resulted in the little aggressive company's undertaking being purchased by the big and troubled company. It is possible, too, that in some cases Batten in his defence of these "little nationalities" was justified in his belligerency by the oppressive methods of the great company, for it is true, as Landor said,

Men always hate the man that's great,
Nor cease to fall on him that's small.

And the same is true of railways. Still, it was thought a mistake to be at the same time a director and counsel for a company.

I have seen Batten's round, fat face, where the lines were all round curves, reduced to angles of sorrow, his eyes with tears in them, and his button mouth of a tremble when some harsh word was said to him in committee. He had, I have no doubt, an excellent smiling heart inside his little body, and when he died we missed the little ball of a man who used to roll about the Committee-rooms.

I mentioned a good many of my juniors at the Parliamentary Bar in an earlier chapter, and I am precluded from

mentioning most of them by the fact that they are still alive and well, or as well as the small amount of business in the Lobbies in these days of war will let them be.

Nothing has pleased me more in giving up my practice at the Bar than to find that my juniors can still think and speak well of me.

Anton Tchekow, the Russian, speaks of "another senile weakness—reminiscences," and that saying haunts me in writing these recollections. But at the risk of being accused of having an egotistical memory and publishing by way of reminiscences what are not memories but only testimonials from some of my younger colleagues, I will quote one or two words from the letters of my juniors which were dictated by kindness.

One says,

"I can look back to a good many years, though they are only a fraction of the time covered by your brilliant career in which I have been brought into constant contact with you in the practice of our profession ; and it is a great pleasure to be able to look back to an unbroken retrospect of kindness and consideration on your part from the time when I was a beginner to the present time."

Another, equally generous, says,

"I have nevertheless spent nigh upon twenty years with you, as a friend or foe, and I honestly say there is no member of the Bar whom I would have preferred in either capacity."

The writers of these are both now successful leaders in the profession.

But as I am writing about juniors let me quote from some of their kindnesses.

"I cannot tell you," writes one, "how grateful I am and shall always be to you for your constant kindness and encouragement. You led me in the first case I was in and I find it very hard even to imagine going on with the work of the Committee-rooms in your absence."

That is nonsense, but quite nice nonsense. Another says,

"Never since the time when you first led me can I call to mind anything but heart-loyal, cheerful, and kindly assistance



ERSKINE POLLOCK, ESQ., K.C.

and co-operation on your part. Always taking your share and more than your share of anything difficult or unpleasant to negotiate, always crediting your colleague for his assistance, however unimportant, and never depreciatory."

Again,

"I want to tell you how sincerely sorry I am I cannot have the pleasure again of either being with you or against you; and it always was a pleasure because of the invariable courtesy and consideration you always extended to myself, as indeed to all your fellow members of the Bar."

"But," writes another, "I must write a line of thanks for many kindnesses received in the nearly twenty years which have passed since as a junior in light railway cases I first met you. You were always a good leader, none better, for though you did not give one as much soft-soap as Webster, you took one's points if they were worth taking and you were always a pleasant man to be against even, as generally happened when one was beaten, for you always fought against one's clients and not against oneself."

One more.

"Of your constant courtesy and consideration for your juniors, even when they were most trying and thought they knew more than you did of technical points, I can testify from twenty-five years' experience. I thank you. I hope not good-bye."

There are many more of these too kind letters. Of course they are far too flattering; but one likes flattery from good friends. Did I not say I had had excellent juniors?

CHAPTER XXII

CLIENTS

A Client that had the Best of Me—No Financial Adjustment Claimed by my Clerk—A Counsel who Thought Well of his own and Ill of Other's Clients—The Help some Clients can give Counsel—Two Briefs Compared—Sir John Hollams and his Brief in the New River Water Company's Cases—A Peremptory Client—The Client who Lets you Alone—The Client who tells you the Witness is a Liar—The Country Client and the Parliamentary Agent—Some of the Agents of my Time—Sir Theodore Martin as an Agent and a Writer—Useful Hints from Clients—A Witness on both Sides—A Chemist, and the Water Pumped from the Severn Tunnel—An Independent Opposition to the Forth Bridge—A Golf Story of a Client.

ONE of my clients had the best of me. I was at the time doing a good deal of compensation work for a railway company which was constructing about sixty-five miles of railway, and in one case where the usual exorbitant claim was made against the company for injuriously affecting some property, Sir Ralph Littler and Lush (now Mr. Justice Lush) were the counsel for the cormorants. My brief was marked eighty guineas, but my vigilant clerk ascertained that Sir Ralph Littler's brief had been marked with one hundred guineas, and wrote to our client suggesting that my fee should not be smaller than that of the leader on the other side. It was this letter that gave my humorist of a client his opportunity. He began his reply by apparently admitting that there should be equality between the fees under such circumstances, but he pointed out that only the week before I had conducted a small case for the company against a Mr. Lawrence Gain (a Leeds

local long since dead), and that in that case he had marked my brief with a fifty-guinea fee when Mr. Gain had only twenty guineas marked on his brief; and he suggested that if there was to be "levelling up" in the one case there ought in equity to be levelling down in the other. As I say, he had the better of me, and my clerk did not continue the correspondence. The "financial adjustment" suggested was not the one he had contemplated.

I knew one counsel at the Bar who really thought exceedingly highly of his own clients and had the lowest opinion of those who sent their briefs to somebody else. No doubt like the medical man who gave a certificate of lunacy and stated in it the facts indicating insanity, "observed by myself," that the alleged lunatic "called me a fool," so the counsel in question may have taken it either as an indication of a want of intelligence or as due to a malign influence that the solicitor in question had made such a serious mistake. But I am bound to say for myself that although I have been much beholden to my clients for their help, I have found flaws even in them; and on the other hand I have had to give my respect to many members of the lower branch of the profession, even although they had not thought it well to instruct me.

But of course there is a great difference to be found in clients and their instructions. I remember in one day I received two briefs. It was a busy time, and I had to wade through miles of lawyers' clerks' writing or of beastly purple type-writing, the ink of which comes off on your hand and shirt-cuff when you mark your brief; and the contrast between these two briefs was remarkable. I am not speaking of the outside of the briefs. The "back sheet" on which the fee is marked is important, although some derogating junior used to call it "backshish," but I am referring to the inside. The one was a brief for a great corporation and consisted of over 100 pages of matter, most of which was immaterial. I had to plod through that slough of despond with weary eyes and aching head. The compiler of that rigmarole had pitchforked into it documents and statements which were

as foreign to the case as an iceberg would be in the tropics. The town clerk of that great town, an undoubtedly capable man, had obviously trusted the drawing of the brief to some imbecile of an articulated clerk who, acting upon the prudent maxim that it is better to tell counsel too much than too little, had told him all he knew, and that was mostly irrelevant. But that "little more and how much it is!"

The brief had to be boiled down with time and labour by counsel, and when the small matter it contained had been mastered it turned out that the points in the case were the smallest and simplest. But to find a pin in a rubbish-heap is an arduous matter.

The other brief was a model. It dealt with a very complicated gas case. It only consisted of thirty-five brief sheets and in it there was not a word too much or a word too little. No redundancy and no waste! After my long toil I had a very different opinion of these two clients.

Let me pay one word of tribute to the memory of Sir John Hollams, who was my client in the arbitration as to the purchase of the New River Company. The brief in the case before Sir Edward Fry and again the briefs in the Court of Appeal and House of Lords, were prepared by him, and counsel need never wish for a better set of instructions. He was, even in his later years, a man of shrewd intelligence, and his kindly hospitalities in his house in Eaton Square will be long remembered by the many friends he had on the Bench and at the Bar.

But it is not only in the matter of preparing instructions that clients differ. I have had men as clients who fussed like a house fly and buzzed instructions into your ear with the pestering persistence of a blue-bottle. You can scarcely imagine how much such a client can bore you between eleven in the forenoon and four in the afternoon, or how you shrink from another excited and sibilant consultation after the rising of the Committee.

It is odd how the little peculiarities of some men remain in one's memory while much more important characteristics have faded—like an ancient photograph. I

remember one of my clients laughed like a turkey cock, while another's laughter, instead of being hearty from the throat, consisted of drawing his breath in through his teeth, which made a kind of sizzle. One man had stealthy eyes, another a sleepy smile. But on the other hand I have had a client who, having put all his riddles in his brief, was as silent as the sphinx in Court and let counsel take his own way, looking on with a stony stare.

One of my colleagues at the Bar always seemed to acquiesce with his clients in all their suggestions, but as a fact never took the least notice of them in the conduct of the case. But the rejection of hints may be as fatal as the hurried acting upon ill-considered suggestions. The wise counsel must judge, and judge quickly, of the value of these verbal instructions.

I remember one client who had the lowest opinion—perhaps rightly—of the witnesses on the other side. I daresay they came from South Wales or were pilots, to whom the accuracy of any statement is a matter of secondary importance, and who in consequence have got a reputation for unveracity which takes from their value as witnesses in the eyes of those who expect truth from that quarter. These witnesses are up in town at the expense of one of the parties, and when the day's work in Committee is done enjoy themselves rarely, and they do not hesitate to play the tune in the witness chair which is required by the party that pays the piper. Now my client in the case kept on asserting in heated whispers of each of these witnesses,

“He's a liar. I tell you he's a liar.”

I pointed out to him that if he could only show that the man was not speaking the truth it would be a great advantage to us; for although I deprecate a lie as evidence in my own case, it is a godsend and not a devil-send when it is detected in the opponent's case. But he did not seem to see that a found-out “liar” was a poor support of a case, and rather lost his head in the turmoil of his anger.

Of course counsel's life in Committee is not a happy one, for he has not only the instructions of the country solicitor

for the Bill or the petitioner to attend to but has also the assistance, sometimes very pressing, of the parliamentary agents. But the parliamentary agents in my time were a very high class, and many of them I remember with respect.

Old Mr. Clabon was a gentleman. Mr. Grubb was a very quiet man, but I remember him well in the back room on the ground floor of 7, Great George Street. Rees of Rees & Frère, who was parliamentary agent for the Hull and Barnsley Railway Company, was a quick, able, decisive man. Ashby Pritt (of Sherwood & Company) was always pleasant, and one could do business for him or against him with satisfaction. Sir Richard Wyatt had a slight squint, but he was himself a straight man, and his partner Cooper, who by the way always had a rose in his buttonhole, was an excellent agent. Mr. Lock, who was somehow connected with the Duke of Sutherland's estates as factor or otherwise, was an agent with quite an intermittent practice. He was a timid, flinching man, but as mild as milk.

Sir Theodore Martin was practising as an agent for many years while I was at the Bar. He had a broad face and broad forehead and was sometimes a little impetuous as a client. He was a man of undoubted ability in small things. Some of his *Bon Gaultier Ballades*, which was a work written in his young days in collaboration with Aytoun, are distinctly smart, and some of his translations from Heine, one or two of them being in Scotch, are dainty and excellent. His life of Lord Lyndhurst, too, had merit. I never read, I am ashamed to say, his *Life of the Prince Consort*, but I did read his translation of Horace's odes. But a translator confesses by his work that he is only a maker-down of old clothes.

I remember, speaking of translations, a Scotch poet once said to me as to translation something which stuck like a burr to my memory. He said if you go out of a morning and see a drop of dew on a cabbage-leaf it is, with the sun in it, a globe of fire, but take it off the cabbage-leaf into the palm of your hand and it is nothing but a drop of water. That,

he said, is translation. But Sir Theodore was an interesting man. His partner, Mr. Leslie, was a big man with a presence and a temper, but a business man and an assiduous agent. But all these are gone. And some others that I knew well and worked with pleasantly have retired from the active practice of their profession, while others younger still are ready to be as active as ever if only the times were better and enterprise held up its head again.

Sometimes—for I seem in what I have written to have been ungrateful to my clients—one's clients gave one most useful hints, as for instance in a case where a veracious gentleman had been so anxious for a trip to London at someone else's expense that he had applied to my client to come as a witness for him in support of the Bill ; and when he had declined his services volunteered to come for an opponent, and gave quite bitter evidence for the petitioners against the Bill. That "impartial" gentleman who thought a week in London more important than a conscience was somewhat easily disposed of in cross-examination.

The real expert witness should be very careful to be consistent. Once in cross-examining a skilful witness from information got out for me by a painstaking client, I asked him as to the reason why he said the water which he was praising, which was water, by the way, pumped from the outer casing of the Severn tunnel, was suitable for the supply of a town like Bristol, when it had a certain amount of magnesia per gallon in it. He was perfectly confident that the magnesia was harmless and that the water was an excellent one. But he had in a Bill a few sessions before, when it was proposed to take water from an old colliery working for the supply of a town, sworn that the water, which contained only half as many grains of magnesia per gallon as the Severn tunnel water, was on that ground quite unfit for town supply. I had the advantage of having his earlier evidence in print, and I put it to him. I admit he was surprised, and as the Members of the Lords Committee were also to some extent astonished, and spoke about having his evidence taken off the shorthand notes, he

asked leave to retire and said he would return the following day ; but he did not, and the Bill died !

It is wonderful, as will have been gathered, what good evidence a client can procure by a promise of a trip to London. I have seen a witness thrown out of his stride by a question.

“ Have you ever been in London before ? ”

And when the Forth Bridge Bill was being promoted in the interests of the East Coast Companies, as they are called, and it was regarded as detrimental to the West Coast Companies (the London and North-Western and the Caledonian Railway Companies), there was an entirely independent opposition to the bridge from persons who sailed ships up the river to Alloa and Grangemouth and Bo'ness, who alleged that the bridge even with its cantilever span of 1,500 feet, would be a great obstruction to their trade. They came to the Committee in great and convincing numbers and were proving the destruction of their industry with many nautical terms when it occurred to someone (I think it was one of the members of the Committee) to ask how they came up to London. “ By train,” was the answer. “ Did you pay your own fare or get a pass ? ” Then the truth came out. He had come on a pass from the Caledonian Railway Company, and the independence of the opposition was doubted after that.

There is only one more thing I will say about clients, but it throws some light upon the matter. There was a man who had held the responsible position of Town Clerk to one of our great corporations, but he was ambitious and came to the Parliamentary Bar. He got, partly owing to his knowledge of the law and partly owing to his connection with or friendship for other town clerks, a very considerable practice, and did it well. Not very long ago he was playing golf with one of the junior “ silks ” ; he was getting the worst of it, and said, “ B——, you have greatly improved in your play. I used to be able to give you a stroke a hole and beat you.”

“ Yes,” said the wise K.C., “ but that was when you were Town Clerk of ——.”

CHAPTER XXIII

ON GIVING EVIDENCE

Enjoyed being a Witness—Heckled—Evidence as to the Canadian Law as to Inebriates before a Committee—Evidence as to Working of the Railway and Canal Traffic Acts—As Secretary to the Commission—As to Technical Knowledge on the Bench—Went as Expert for a Railway Company to Scotland and was Cross-Examined—The Scotch Private Bill Procedure Act—Scotch Counsel I have been Associated with—Evidence before the Joint Select Committee on the Water Supplies Protection Bill—Altering the General Law as to Property in Underground Water—Lord MacDonnell Chairman—Observations on National Water Sources—Evidence as to Shorthand Writers before Recent Committee—Counsel's Notes and Shorthand Writers' Notes—Quick Speakers, and Many Speaking at Once—A Shorthand Writer's Mistake—Short Answers.

I HAVE not had many opportunities of giving evidence, but I confess that when I have been called as a witness I have enjoyed myself. Having, as I once said to a "heckler" at an election meeting, been cross-examining all my life, it was only fair that I should in my turn have the thumbscrew of awkward questions applied to me; and I believe I may say I have endured such ordeals as I was subjected to with some credit to myself.

In my early days, before I was at the Parliamentary Bar, I gave evidence before a Committee of Parliament which was, if I remember aright, inquiring as to a proposed alteration of the laws as to habitual drunkards. But it is so long ago that even the precise object of the inquiry, or, to use a cant phrase, where I "came in," has escaped my memory. But I believe I had made myself familiar with the restrictive

laws of Canada and informed the Committee about these.

The next time I gave evidence was before a Committee which sat to consider the working of the Railway and Canal Traffic Acts. That must have been some time between 1874 and 1879, for at that time I was Secretary to the Railway Commissioners and I gave evidence in that capacity. I think my evidence was aimed at making the Commission more of a Court, and also, I believe, I condemned the idea that it is necessary in a Court to have technical knowledge on the Bench. The thing to aim at in appointing a judge is to get a man with a mind, and not in medical cases to have a doctor, in engineering matters to have an engineer, or in a horse case to have a "vet." for your "skilled" tribunal. If you have "a man" you have a conscience, and that is more important than all the knowledge about irritant poisons, Westinghouse brakes, gridiron sidings, or spavin. I do not know whether my evidence had any weight, although at the time I daresay I thought it deserved it, but the Act of 1888 did, as I have said elsewhere, reconstitute the Railway Commission on more legal lines, although it still retained upon the railway tribunal gentlemen who are supposed to have a special knowledge of railways and their working.

Once I gave evidence as an "expert." You can understand, having in mind the three degrees of comparison—the positive "liar," the comparative "d—d liar," and the superlative "scientific expert," to which some wit has added a super-superlative by mentioning a well-known gentleman's name which I will not divulge—that the occasion has lived in my memory when a good many more important matters are dead and gone.

We at the Parliamentary Bar rather resented Lord Balfour of Burleigh's Act, which was called the Private Bill Procedure (Scotland) Act. Although it was introduced when he was Secretary for Scotland it had been the hobby of A. Craig Sellar and was suggested naturally enough in the interests of the Scotch Bar. The gentlemen of the long robe who trail the skirts of it about the dusty floor of the

Parliament House, Edinburgh, when they are waiting for a "fare," like a cabman on a stand, were dissatisfied that all the work connected with Scotch Bills was transacted in London, and although eminent Scotch counsel were frequently taken up to town and associated with English colleagues in such cases there were many Scotch Bills which went through Committee in which only English counsel were employed. I have myself been associated in various matters with men like Mr. Blair Balfour (afterwards Lord Kinross), Mr. Asher, Q.C., Mr. Scott Dickson (now Lord Scott Dickson), Mr. Graham Murray (now Lord Dunedin), and Mr. (now Lord) Anderson, Mr. (now Lord) Dundas, Mr. Horne, Mr. Murray, Mr. Macmillan, K.C., Mr. John Wilson, K.C., and others. But the agitation of the Parliament House had succeeded and the Bill, which took away certain Scotch Bills from Committees of Parliament and sent them to a tribunal consisting of some members either of the Houses of Commons or Lords, and some outsiders called, if I remember aright, in the Act, "men of affairs," became law. There is a Scotch proverb which says, "It is not lost that a friend gets," and with that we of the English Bar had to console ourselves. What was a loss to us was a gain to our friends at the Scotch Bar, for although the Court which was constituted under Lord Balfour of Burleigh's Act was an imperial one, and was therefore open to English counsel, there were two reasons why members of the more southern Bar were very seldom asked to go to these northern inquiries. The one was that the Scotch Office, with a view of keeping the Scotch business for the Scotch—under this little Home Rule Bill—generally fixed the inquiry at a time when there was much work to be done at Westminster; and another reason was that when English counsel were asked to go they or their clerks opened their mouths very wide as to the fees which would have to be paid. It was in connection with one of these so-called local inquiries (although the inquiries are not held locally, but in Edinburgh or Glasgow) before the Scotch Tribunal presided over by Lord Killanin, that I gave evidence as an "expert witness."

The North British Railway Company desired my services in opposition to a tramway or light railway which was being promoted by someone in the kingdom of Fife. The inquiry was in summer, a very inconvenient time for me, but I went down to Edinburgh by the night train, gave evidence the first thing in the morning, was cross-examined by one of my learned friends, who was not only merciful but polite, and left again about one o'clock and was in London that night and ready to cross-examine someone in my turn the next morning.

I say I think my friend of the Scotch Bar must have been merciful to me, for I remember arguing the case—it was far more argument than evidence strictly so-called—to my own satisfaction and I believe to the satisfaction of my clients. I found that “expert witnesses” were handsomely remunerated for their “expertness,” indeed, I am surprised that all the great consulting engineers and chemists who come into Committees and Courts and “lay down the law to us,” do not make immense fortunes.

I gave evidence again, more recently, before a Joint Select Committee of the two Houses under somewhat curious circumstances. A Public Bill had been introduced into Parliament, called the “Water Supplies Protection Bill.” It was a very crude proposal. It sought to alter the law of underground water and to endow landowners with rights to water in their lands whether the waters were in defined channels or not. Under the law as laid down in Chasemore & Richards there is no property in underground water which is not flowing in a defined underground channel but is merely percolating or, as was said, squandering itself in the pores of the earth. But the county of Hertford had, or said it had, suffered desiccation from the pumping of underground waters by various companies like the East London Water Company (now the Metropolitan Water Board), and others, and could tell harrowing stories of watercress beds having been left dry in summer.

Now the Bill, which was to alter the whole law as to property in water for the benefit of landed proprietors in

Hertfordshire, was referred to a Joint Select Committee of which Lord McDonnell was chairman, and it determined not to hear counsel. But some clever person saw the way to make that decision of the Committee futile, for Lord Robert Cecil—who always appeared as counsel for Hertfordshire when one drop of that county's water was threatened—was called as a "witness," if you please, and argued the case for the Bill with great ability.

It was under these circumstances that I was approached by an Association of Water Companies whose interests were vitally affected by the Bill, and asked if I would give evidence against the Bill, which was described by them, perhaps incorrectly, as a Hertfordshire Landowners' Protection Bill ; and I consented to do so. I do not suppose my evidence contributed to it, but the Bill, which was altogether a bad Bill, never became law ; at the same time the Committee took a very reasonable view in relation to the great question of national water supply. They reported on the desirability of conserving in all reasonable ways the water supply of the country, and they recommended "the creation of an organisation empowered to inquire into the whole question of surface and underground water supplies from a comprehensive standpoint, to supervise the future allocation of supplies, and to serve as an authoritative adviser of Parliament in consideration of particular schemes." Of course nothing has come of that reasonable suggestion. We know a certain place is paved with "good intentions" ; there are enough of excellent suggestions buried in our Blue Books to make satisfactory macadam even for a larger place.

The only other time I gave evidence was before a recent Committee which sat to inquire into the question of "Debates and Shorthand Writing in Committees." I gathered that another Committee which had been appointed to see what economies could be effected in the Government Services, had suggested that some economy might be effected in relation to the shorthand writing, which is at present done by the Shorthand writer appointed by the House, and his assistants. It

was quite an ingenious suggestion, and the Committee I am referring to had been appointed to inquire into the matter. We know that if you look after the pence the pounds will look after themselves, or, as *Alice in Wonderland* had it, and it is an excellent motto for counsel, "Look after the sense and the sounds will look after themselves"; but at a time when the war is costing £5,000,000 a day and when every soldier is costing almost as much as a Member of Parliament, £300 a year, it did seem that the small economy which might be effected in shorthand writing was too small a matter to take such laborious cognisance of. Still, the beauty of Government is that, it is like an elephant's trunk, which as we know can lift a heavy cannon or on another occasion pick up a pin. In this case, however, Government has confined its attention to the "pins" of economy and thrift and has done nothing with the heavy weights of the salaries of Members or Ministers, although it has had its reluctant attention called to these matters.

But while speaking of shorthand writers let me say a word both of praise and dispraise of them and their notes. Of course a shorthand writer's note which takes down every word that is uttered, many of which are painfully irrelevant, is not as good as a note taken by an intelligent counsel. There is a story told of a Scotch professor who upbraided an idle student with not taking notes. The next morning the youth appeared with a copious portfolio and a prominent pen and took down the first words the professor uttered, which were "John, shut the door," as if his life depended upon the fullness of his transcript. But although the select notes of counsel are invaluable it would be impossible now to do without the more voluminous production of the shorthand writer. The shorthand notes of to-day are transcribed in longhand and printed, and are in counsel's hands by nine o'clock to-morrow morning; and as counsel, owing to unavoidable absence in another place or places, may not have been in the room at all, this verbatim report, although perhaps too full, is essential. The difficulties of the shorthand writers are great, for not only have they to take down with hurrying

fingers what a rapid counsel who may get 150 words into a minute, says, but also to try to disentangle the threads when two or three people are speaking at the same time. On the whole they do their work admirably. They have their complaints, but these are not of men who, like Sir Ralph Littler and Mr. Erskine Pollock, spoke very fast, but of men like the late Mr. Ledgard, who began a sentence and never finished it, and continued to put parentheses inside parentheses like a nest of pill-boxes. But it is wonderful, considering the circumstances, how few mistakes they make. I mentioned one in my evidence to that Committee. In one of the big Electric Bills I had at one time to comment upon a feeble, half-hearted opposition to the Bill, which had been launched by one of the opponents. And I referred to the neither hot nor cold speech of my learned friend who conducted their case, by saying, "As for Mr. C——, he roared as gently as a sucking-dove." The printed notes of the next morning reported me as saying that he had roared as gently as a "sucking-pig." My attention was called to the misprint, and to rub the joke in I asked solemnly to have the shorthand notes corrected.

But that was not the end of it. A provincial paper which took an interest in the matter referred to it, and pointed out that Mr. Balfour Browne ought to have known that doves were not mammalia and did not suck—which showed that the editor was more familiar with his natural history than with his Shakespeare.

There were often some humorous mistakes made, but I will confine myself to the one I gave in illustration in my evidence before the Committee.

From my experience I have come to the conclusion that if I had not been at the Bar I should have liked to be a professional witness, and I am further, as we say on "the cases," of opinion that it is the same quality which makes a man put a question well which makes him answer a question well when it is put to him. Clearness and brevity are the right qualities both for a question and for an answer.

I remember looking fiercely at a witness who was giving very long, prosy answers and telling him that a "short answer turneth away wrath," and I am not sure yet that that was a wrong quotation.

CHAPTER XXIV

CONTRACTORS' CLAIMS

Private Bill Business Deals with Important Matters—Schemes are Intended to Benefit the Public—Briefs in Contractors' Claims—Why Contractors are Selected—Tenders—The Lowest Tender—Inducement to Accept—May Pull Through—Or Make Thumping Claim for Extras—That has to be Arbitrated upon—Cases depend upon Thousands of Letters and Labyrinths of Figures—Not Interesting—One Interesting Case—The Tunnel for Vyrnwy Water under the Mersey—Siphoning—The Tunnel made by Means of Greathead's Shield, and Compressed Air Through Silt—Claim by Contractors—In Court—And then in Arbitration—The Inquiry, and Sir Frederick Bramwell's Joke.

THERE is one circumstance connected with practice in relation to Private Bills which raises it above the level of the somewhat squalid disputes as to the breach of some trivial contract, or the claim in respect to some miserable tort, and that is that not only the money issues involved are enormously more important, but that the whole of this legislation is a proceeding not arising out of an attempt of one man to defraud another—for many civil suits are scarcely distinguishable from criminal proceedings—but a proceeding by the promoters of Bills now are attempting to meet some public want, or to supply what the economists call an article of utility. Of course they may be mistaken, but that is the goal they are playing for, and it is only if the enterprise does turn out to be like the famous Waverley pen, "a blessing to men," that they can hope to make a profit out of their enterprise.

But my practice has not been confined to these ambitious schemes and I had in my time big briefs full of thousands of

letters in which a claim was made by a contractor for "extras." The system by which contractors are chosen to carry out some great work seems ideally perfect, but is open to violent abuse. The usual course is for the promoters to invite tenders for the works as described in their engineer's specification, and various contractors send in their offers to carry out the works for a certain sum. There is here, of course, a great deal of temptation to the directors of the company which is going to carry out the works to accept the lowest tender, although, of course, they state in their invitation that they are not bound to accept that or any of the tenders. If it can be done for that sum they are saving the shareholders' money; if they accept one of the higher tenders there might be accusations that favour had been thrown into the scale of justice. But, of course, there is an inducement in such an invitation to the contractor to make his quotations for earthwork, or rock, or ashlar, or other things, as low as he possibly can. He probably has the borings that have been taken by the engineer of the company, but he is warned that he must not rely upon these and must verify the strata he will have to work in for himself. But let us suppose that a contractor has succeeded in getting by his very moderate tender the contract, and that he is lucky in finding soft soil where the borings indicated hard rock. Suppose that all the circumstances of the contract proved toward the contractor may, notwithstanding his low tender, pull through; but if, on the other hand, the circumstances turn out worse than he expected, then he will probably have to face a loss on his contract and then he will doubtless make a claim for "extras"—and no niggard claim—and the matter will have to be referred to arbitration. It used under the contracts to be referred to the engineer of the company, but as he was in effect a party to the dispute it has been more frequent in recent times to refer the matter to an independent engineer, and it has to be worried out before him for painful weeks, through volumes of correspondence, through labyrinths of figures, and through marshes over which there are a great many of those will-o'-the-wisps we

know as lies. These are long, uninteresting, but not unremunerative cases, and in most of those I have had I am glad to say the details have escaped my merciful memory, which has not only done me good service by keeping a record of some matters but also by passing on others to a gracious oblivion.

But I do remember one case in which there was some interest. The conduit which carries the water from the Vyrnwy Reservoir in Wales to Liverpool has at one point to pass under the river Mersey. The siphoning of water in pipes is one of the important facts in connection with modern water supplies. The Romans were great engineers and constructed aqueducts which carried water great distances, in one instance a distance of sixty-two miles from the source to the district of supply. These aqueducts were really artificial rivers, in many cases crossing valleys upon arch-work, which still remains to attest the engineer's skill. But in these water flowed as in an ordinary river, downhill, by gravitation. These engineers, however, seem to have understood the principle of the inverted siphon, as it is called, by means of which water is carried in pipes which run downhill on one side of a valley and uphill on the other side, for there are indications that Lyons was long ago supplied by means of lead pipes some twelve inches in diameter and worked under a head of 200 feet. But before the nineteenth century, when cast-iron pipes came into use, engineers used to cross valleys by bridge aqueducts for their pipes, either the hollow trunks of elm trees (from which fact we still get our word "trunk mains"), or of lead, which did not lend themselves to the conveyance of large quantities of water, as ordinary aqueducts did.

But this pipe under the Mersey was to siphon the water of Vyrnwy under the river and bring it up again on the northern side for the consumption of Liverpool. The difficulty of the construction was great, for the soil under the Mersey was silt; and although it is easy enough to drive a tunnel in solid rock or in stiff clay it used to be impossible to get through such materials as silt or running sand. Now, however, by

the use of Greathead's "shield" and compressed air it is as easy to get through these water logged materials as to drive through rock itself. In the case in question the tunnel under the Mersey was driven under the superintendence of Mr. George Deacon, a dapper man and a dapper and a little pedantic engineer acting for the Corporation of Liverpool, by means of these methods. After it had been completed there was, as usual, a claim by the contractors against the Corporation for "extras," and although it began as an action in the High Court with Sir Charles Russell as the leader on the one side and Sir Richard Webster as leader on the other, it was there agreed to refer the matter to the arbitration of Sir John Coode.

My learned friend, Mr. French, K.C., a large man with large jaws, short sight, a brick-red face and a wheezy voice, who was afterwards County Court Judge at Stratford, and was quite a find for the evening papers—for he joked with some shrewdness on the Bench, and all a judge's jokes are funny—and Mr. Joseph Walton, afterwards a painstaking Judge of the High Court, appeared for the claimant. I appeared with Mr. Pickford, K.C. (now Lord Justice Pickford), and a junior for the Corporation. It is impossible in such a discursive place as this to go into the interesting matters raised in the case as to the boring through the loose strata by means of air at a pressure of thirty to thirty-five pounds to the square inch, the air lock by which, just as on a canal, a boat is raised or lowered from one level to another, men were taken out of or into the ordinary atmospheric pressure into or out of the compacted pressure which was holding back the water in the pores of the silt. The change in the pressure is exceedingly trying for poor human lungs, and in the case of Mr. Deacon himself resulted in fainting. But although it would be tedious to go into these details I remember in connection with the case a saying of Sir Frederick Bramwell—who was either one of the arbitrators or a witness in the case—which in justice to his memory deserves to be recorded.

The arbitration took place at the Westminster Palace



W. O. DANKWORTS, ESQ., K.C.
From a Sketch made by Harold Wright, Barrister-at-Law

Hotel, a place where many such inquiries were held, and it took place in summer weather—at any rate the quiet proceedings were interrupted by the loud music of a very brassy band through open windows. For more than a minute the proceedings were suspended by a raucous rendering of "Land of Hope and Glory," and then "silence like a poultice came to heal the blows of sound." The musicians passed and there was a silence of relief in which Sir Frederick Bramwell remarked, "That is an illustration of boring by means of compressed air."

CHAPTER XXV

A VERY MISCELLANEOUS CHAPTER

Dinners Given to Retiring Members of the Bar—Dinner to C. A. Russell, K.C.—Dinner to Sir Edward Clarke, K.C.—Dinner at the Albion to Sir Edmund Beckett—Mr. Venables' Speech—Dinner to Sir Francis Jeune (Lord St. Helier)—His Reference to his Going—Mr. Pember's Explanation—Dinner given to Mr. Pember when he Retired—Some Passages-at-arms—The Atmosphere in the Courts—A Lord Justice's "Aberration"—A Surveyor who Complained that I was Injuring his Practice—Amendment—Once a Director of a Company—And once a Defendant in an Action—The Beltim Land Company—The Directorate—Became Trustee for Lenders and held Debentures as Security—Action Against Me—Special Adaptability—What it Means—The Uncertainty of the Law—Countess Ossalinski's Case—Other Illustrations—An Ocean Dock—An Aerodrome—"Property," the way it was Looked at in the Old Days and To-day—Tennyson's Northern Farmer—Full Compensation to Owner—Allowance for Compulsory Sale—Both for "Compulsion" and Unforeseen Prospective Value—Now a Change—Acts of Parliament make Allowance Illegal—The Purchase of a Whole Estate by a Large Town—The Resistance of the Owner's Three Sisters—The Hall and its Old and New Surroundings—Bill was Opposed and Failed—Corporation Offered more than Estate was Worth—Offer Refused—Ultimately was Sold on Arbitration Terms for a much Smaller Sum.

IT has been the custom, except in war time, to give a dinner to a member of the Bar when he retires from practice, to indicate with what pleasure his colleagues appreciate his going and also to make it impossible for him to return and revisit the "glimpses of the moon." There have been quite notable dinners given on such occasions in my

time. A dinner was given to the excellent and deliberate C. A. Russell when he retired, and the Attorney General of the time, Sir Rufus Isaacs, was in the chair, the Government having made a mistake and failed to recognise Russell's eminent qualifications for a judgeship. There was a dinner given to Sir Edward Clarke, who retired full of honours after a long and brilliant career at the Bar, and a career in politics where he had more than once put his foot in it. But it was rather of our own dinners that I wanted to speak.

When Sir Edmund Beckett retired from a life of "stirt and strife" at the Bar, the members of the Parliamentary Bar gave him a dinner at the Albion in Aldersgate Street, and George Stovin Venables was in the chair. His speech on that occasion was a model of after-dinner speeches: genial and piquant, full of appreciation of the great man who was in future to "swing on a gate," and yet with such polished irony and sly allusions as kept that select company not "on the roar," but certainly on the broad grin and gentle chuckle. So good was it that we had it printed, and I know I had a copy. There is a Scotch proverb which says, "Keep a thing a hundred years and you'll find a use for it," which is good optimism for a miser; but my experience is, keep a thing twenty and you cannot find it. I have been unable to find the print of that speech with which I meant to decorate a dull page. I remember its excellence, but not the bland words.

There is the historic dinner story, which at the risk of being accused of trying to pass off old lamps for new I will repeat. It was a dinner given to Mr. Justice Lush and Mr. Justice Shee, who were raised to the Bench about the same time, at which the old toast of "Wine and women" was given, coupled with the names of Lush and Shee.

We gave a dinner to Sir Francis Jeune (afterwards Lord St. Helier) when he, contrary to precedent, was taken from our Bar and made a judge of the Probate, Divorce and Admiralty Division. It was said that on that occasion Jeune himself, who joked, like the Scotchman, with "deefficulty," made an appropriate quotation when he said

that there would be no moaning at the Bar when he set out to sea. But I remember Pember's speech, although I forget what toast he was proposing. He said he had often been puzzled why Divorce and Admiralty should have been associated in one Division of the High Court, until he remembered that "Venus rose from the sea."

At the dinner we gave to Pember when he retired at the age of seventy he said that he would rather people asked why he was going instead of why he was staying. And he was right. That is the time to go. But many men have outstayed the welcome of the profession, and it is a pitiable thing to see the popular favourite that once won the Derby doing small hackwork in a cab.

I admit I have bristles, but I also have pretensions to mild manners when I meet placable behaviour; I sometimes flare up, I fear, like an irritable volcano, but only when some little tyrant tries to domineer or some sneak tries to deceive. I will only speak confessionally of myself for a minute. When one went, as one had to do on occasion, up to the Courts, one found the atmosphere made by those legal peaks which were elevated on a Bench, like the Andes, as inclement as it could be. One was not one of the ordinary counsel that came before them every day. One was something of an intruder (possibly for a too adequate fee), a poacher, and consequently these bigwigs seemed to resent one's presence. As I say, it was mostly atmosphere and there was no overt act of incivility. Once, however, when I was before an illustrious judge, when I turned to my common law junior to ask a question, the great man said in silky tones,

"Consultations out of Court, Mr. Balfour Browne."

"Yes, my lord," I answered, "but promptings in Court," and went on with my, perhaps too dictatorial, argument.

Upon another occasion a Lord Justice, having misunderstood an argument I had addressed to him, remarked that I had said something in quite a contrary sense before. I thought that rude, and I always remember the words, *Nemo me impune lacessit*, so I said,

"My lord, one of us is labouring under a mental aberration, and it is not I."

Meanwhile his two colleagues on the Bench were making signals of distress and deprecating further discussion in such an acrimonious vein. I am not vindictive, but I was rather pleased when the House of Lords reversed the decision of the Court of Appeal in that particular case.

I recall, too, how a surveyor who had appeared in several compensation cases that I had conducted for a railway company, and who had been rather pungently cross-examined by me, came to me and appealed to my humanity. He assured me that what I had done to him and said of him was doing serious harm to his practice as a surveyor.

"Yes?" I said, with every wish to temper the wind to the shorn lamb. "Well, in future try to speak the truth." And upon my honour I think he took my advice and *tried*.

I was only once a director of a company and only once the defendant in an action. A company was formed to purchase certain lands at places called Beltim and Belcasse in Egypt with the object of turning their desert sands into a Garden of Eden by pumping water from the Nile and letting it flow over the lands to be purchased. That was some years before the Assuan dam or any other barrage was thought of. The directorate I was asked to join was eminently respectable. The chairman was the then Duke of Sutherland and the directors were General Sir Arnold Kemball, Sir Henry R. Green, the Hon. Chandos Leigh, Mr. Mirehouse, and Mr. Huth. We believed what we were told—first that, like the carpenter, we might have wept like anything to see such quantities of sand as existed at Beltim, but that it only wanted to be watered to be of enormous value. The estates which had been provisionally purchased by the engineer to the scheme were possibly not worth the money that was paid to two enterprising Frenchmen for them, but we, having put up our own money, raised a considerable amount from the public, set about ordering pumps which were required to get the water to the land, and so make a fortune for the Company. It is a sad story, but seems to have a moral that

gentlemen sitting at home at ease are not capable of managing an irrigation scheme in Egypt. Two of the directors went out to look at the place when things were going from bad to worse, but nothing came of their visit. The water never got to the land, the pumps began to rust, and so far as I know the Beltim estate is a piece of tawny desert to this day, unless the great irrigation schemes of Egypt have done something for it.

But I hurry over the loss of our money and come to the action at law. At one time during the haggard existence of the Company it was necessary for some urgent purpose to raise a sum of money; and to secure it to the lenders, who were already shareholders in the Company, a block of the Company's debentures was handed over to trustees (of whom I was one). There had at one time been some talk of handing over to the trustees for the lenders £23,000 of the debentures, but ultimately and before the loan was made, a resolution of the Board was passed that the amount of money to be raised should be reduced and that only £16,000 of the debentures, which were supposed even then to have some value, were to be handed over and placed with the trustees' bankers. When the Company a year or two afterwards came to grief, it was still thought, erroneously as it turned out, that there was some considerable value in the debentures, and two of the subscribers to the loan I have mentioned brought an action against me (I was the surviving trustee). I suppose it was for damages for negligence for not having got the £23,000 of debentures instead of the £16,000.

Well, I am glad to say I left the Court without a stain on my character. I believe my costs came to between £300 and £400, and these two shareholders, who had already suffered in their complaining pockets, had to pay these costs.

That was the only time I was at law, and if I have my way it will continue to be the only time. If I have learned anything in the Courts it is not to go to law. Indeed, I think we might say to those who are going to law what a Scotch minister said to a couple that waited on him to be married.

"My friends," he said, "marriage is a snare to many, a

pleasure to few, and a disappointment to all. Will you risk it ? ”

It is a very different thing, of course, promoting or opposing Bills in Parliament.

“Special adaptability ” has been a godsend to me. Although I was not in the case where the useful doctrine was first patented, I think I have been in most of the cases since and I am saturated with the idea.

When property is taken from an owner under the sanction of an Act of Parliament he is to be paid the value of the property to him. That principle seems to have been obvious from the first, but was established in a case in which a vicar in the City who was the legal owner of a graveyard which had been closed for burials, had the churchyard taken from him under an Act by the old Metropolitan Board of Works. He said, “ You are going to use it as building land. It will be very valuable to you, although owing to the fees for interment having ceased, at present it has no value to me,” and he claimed compensation on the basis that it was building land. The very fact that by means of their Act of Parliament the Metropolitan Board of Works were going to use it for that purpose was some evidence of the fact. But the Courts held that it was not the value of the land in the hands of the purchaser that was the real measure of value for compensation purposes, but the value in the hands of the owner. Now, although that must be regarded as good law—for we all treat decided cases as good law, although in many instances we are foolish in doing so—there you have the principle of the law of compensation established at the expense of that unfortunate vicar. At first sight there might seem to be some doubt even about that now indubitable principle. If there is a willing buyer and a willing seller, the latter may get from the purchaser a little more than the property is worth to him by reason of the anxiety of the purchaser to buy and by the possibility that in his hands it may prove exceedingly valuable. That surely is often the case when property is bought in the open market. If I am the owner of a field and you, a nobleman, want it to round off

and make a ring fence of your estate it is possible that I can procure more from you for the field than the mere agricultural value of a few penurious acres. But there you have it laid down by the Courts that it is the value to the seller that alone is to be taken into consideration.

At the same time it is not merely the present value, but any value that the owner may reasonably look forward to which is to be the basis of the sale. Thus, if a man has a field and grows cabbages, but it is so near a town that it will probably be built upon before long, then he has a right to claim for the prospective building value of the land.

Now this was the small end of the wedge of the doctrine of "special adaptability" which, as I say, has stood me in such excellent stead. Manchester Corporation got leave, with the view to secure the purity of the waters of Thirlmere, to purchase the whole of the watershed, and there was a Countess Ossalinski who was the owner of an estate which bordered on the lake and formed part of the watershed, who claimed a very large sum of money as compensation from the Corporation on the ground that the estate was specially adapted for making a reservoir. It is quite true that by itself the estate was useless for such a purpose, and that even in combination with all the other proprietors round the lake she could not have impounded the water, for that would have interfered with the rights of the riparian owners on St. John's Beck, without getting an Act of Parliament. But these trivial considerations were brushed aside and the arbitrator found that her mere strip of an estate was specially adaptable and awarded compensation on that basis; and the Court of King's Bench held he was right.

It would occur to anyone but a lawyer or an experienced surveyor that if it was legitimate for the arbitrator to value the Countess's property on the hypothesis that an Act of Parliament might have been obtained, it might have been legitimate in the vicar's case to value his barren churchyard upon a similar assumption. But it did not seem to occur to anyone that it was quite a mistake to value any property

upon the basis of what might or might not be done in what is ironically called "the wisdom of Parliament."

But ever since that case, in which there was a nice distinction drawn between valuing the property to the purchaser, Manchester, and using the fact that Manchester was the purchaser as evidence that it was suitable for water-works purposes, and that the proposal was not a wild-cat scheme, the doctrine of special adaptability has been firmly established. If a railway company goes through my land which is level, I suggest that it does so to avoid going through a hill where it would have had to make a tunnel at great expense, and therefore that my land is specially adapted for railway purposes and is not to be paid for on the basis of the capitalised value of the agricultural rent, but at a much higher figure—that figure, of course, being not remotely connected with the saving to the railway company in not having to construct a tunnel. In this way you are by a roundabout process departing from the doctrine of value to the seller and looking to the value to the purchaser as well.

So, too, if a corporation wants land for sewage purposes the owner says, "Yes, but you are coming here for your sewage purposes and that shows that my land is specially adapted for your uses. If there had been any land nearer to you you would have taken that. If there is as good land farther afield it would have cost you more to take your main sewer there, and therefore my land is specially adapted, and you have given yourself away in pitching on it; I must be paid accordingly."

This, then, is the doctrine which in relation to a certain ocean dock, which was to be placed on a barren foreshore which was almost wholly covered by water every high tide, induced certain imaginative surveyors to put a value of £100 an acre on the land. This is what in another case, where land was taken by the Government for an aerodrome on the coast, enabled the owner to make a strong case of the special fitness of his pebble beach and the flat lands behind for the purpose of aviation; and in that case I think Mr.

Grahame White was called as a witness to prove the invaluable nature of the land in the future in connection with commercial aviation. But it is obvious that the doctrine has large ramifications, and in many of these I have been fortunate enough to have an interest—sometimes making out the special fitness of the land for the purpose for which it had been taken, sometimes making out the injustice of this method of allowing the seller of the land to participate in the profits of the adventurers who were creating the work of utility under the sanction of an Act of Parliament. It is not the certainty of the law but the uncertainty that pays the lawyer, and the uncertainty of the law is not greater than the uncertainty of the judges who administer it, so that, notwithstanding the war, there is a fairly good prospect for the legal profession of the future.

If you listen to the clatter of bygone times you will be persuaded—as Tennyson's northern farmer was that his horse's hoofs said, "Property, property, property"—that property was really the keynote to most of the music of those days, just as "labour" is the note which sounds through the discords of to-day. The farmer was persuaded that wealth was a conscience, for

" 'Tisn' them as 'as munny as breaks into 'ouses and steäls,
Them as 'as coats to their backs and taäkes their regular meals ;
Noa, but it's them as never knows wheer a meal's to be 'ad.
Taäke my word for it, Sammy, the poor in a loomp is bad."

But we have changed all that, and it is the rich that are bad in the lump. Prudhon had it that "Property is theft," Mr. Chamberlain at one time in his career thought of holding the rich to ransom, and a more recent politician has proposed an inquiry as to how the rich got their wealth.

Now all this is not as irrelevant as it seems to the questions connected with Private Bill legislation. There is a change as to the way that the legislature looks at property, especially property in land, which is very significant. In the old days, although the State saw that it was necessary in certain cases that a man should be made to part with his property that some public enterprise might be carried out, it certainly

intended that he should have full compensation for the property he was parting with ; and it came to be a custom of surveyors when they had arrived at the value of the property to make a liberal allowance for what was called " compulsory purchase," or for making a man part with his property and all its potentialities against his will. It was obvious that, however careful an arbitrator might be in arriving at the value of land, all that he had definitely to go upon was the present value and any immediate prospect of increase or diminution. But as to a more distant future he could know nothing. The owner was parting with his property for all time, he was deprived of any possible increase in value which might have resulted if the property had been left in his hands, but which at the date of the assessment it was impossible to foresee or estimate. It was largely on this ground that it became the custom to give, in addition to the price of the land, an allowance stated in percentage for compulsory sale. In the north of England, according to the estate agent of the North-Eastern Railway Company, it was the custom to add 50 per cent. to the value of the land taken ; and where the possible prospects are less than in the case of mere agricultural land, where, for instance, the compensation has been calculated on a building land value, 10 per cent. has been in practice the invariable addition for a compulsory purchase.

The two elements then that have entered into and justified that practice were that there were possible prospects which could not be measured by an exact sum, and that a man should have something as a bonus because he was compelled to part with his property, which in effect he had been holding under an implied State guarantee of quiet enjoyment. These then were efforts to be fair to the owners of land. But all that has been altered. Even so long ago as 1896 the London County Council introduced Bills for the purchase of the London Water Companies, and in these there were directions to the arbitrators who were to determine the price, and one of these directions was that they were not to allow any sum for compulsory sale or purchase. These Bills did not become

law, but the suggestion they contained has been acted upon in many cases and indeed was anticipated in the Housing of the Working Classes Act, 1891. The idea of compulsory purchase and the compensating the owner for it is an exploded idea, and nowadays you hear in arbitrations of an allowance of 1 per cent. or $1\frac{1}{2}$ per cent. for the reinvestment of the purchase money.

In one case a large and important town desired to take the whole of an estate which belonged to three sisters, for the purpose of constructing sewage works. It was the fact that the town was exceedingly inconveniently situated for getting rid of its sewage, for although it had grown to be a great town and was the seat of one of the great trades of the country, it was situated on a very little stream or beck, and it was quite certain that the method it had adopted for disposing of its sewage was far from satisfactory. There was, it seemed to the Corporation and its advisers, nothing for it but tunnelling through a hill and taking the sewage to the estate in question, and a Bill was promoted for the purpose of compelling the three ladies to sell their estate on arbitration terms. But the ladies resisted and opposed the Bill. They clung to the ancestral estate, although it was situated on a river which was fouled by many towns, although the Hall was black with smoke and the trees were in a kind of mourning. Still, what is affection if it cannot shut its eyes to defects?

The three ladies came to the Committee-room and sat at one side, and there their woe-begoneness may have been as eloquent as their counsel and may have influenced the Committee, for they threw out the Bill. The sisters took the poor counsel for the promoters at a disadvantage, for there were three of them; but he had to console himself by thinking, as Stevenson says, that "honourable defeat is a form of victory."

After the first defeat, the Corporation still being bound to get rid of its sewage, and being between the devil and—there being no sea about, for it was an inland town—these three ladies, made them an offer for their whole estate

which was really far in excess of its value. The ladies were advised by all their friends and by their professional advisers that they ought to close with the offer. It was obvious to all that the Hall was not what it had been, although long ago it had been a pleasant country seat; now towns and populations had encroached on it all round, and at best it could only be regarded as a dirty oasis in a desert of houses. But the ladies were made of obstinate stuff, and would not part with the estate, although it was under a pall of black smoke with which the chimneys of the neighbourhood draped its dim sky. Ultimately the great Corporation went to Parliament again, like the woman who kept on pestering an unjust judge in the Bible, and to cut a long story short, in the end succeeded, and the estate was reluctantly handed over for sewage purposes—that added a sting to the ancestral hearts—to the Corporation on arbitration terms. When the matter went to arbitration before Sir John Rolleston I am sorry to say they got under the award not much more than half of what the Corporation had previously offered. But I remember the protesting ladies sitting in the Committee-room and looking with sourish looks at the counsel who had the misfortune to have the Corporation brief.

CHAPTER XXVI

SEWAGE DISPOSAL

Not a Subject for Popular Exposition—Many Important Questions Connected with—Case of Corporation of Northampton—Inspector of Local Government Board Examined as a Witness—Had Reported Against the Order—The Provisional Order System—Order Determined on at Whitehall—Case of the Federation of the Pottery Towns—The President's Speech—Nothing More to be Said for Promoters—Protest of Counsel for Burslem—The Large Scavenging of Towns—Manchester Case—My Juniors—M. Cagniard Latour's Discovery—Yeast—Pasteur—Bacteria as Scavengers—Methods in Old Days—Spoiled Streams—Experiments with Earth of Paris Sewage Farm—Aerobic and Anaerobic Bacteria—The Magic of Sewage Disposal.

“**S**EWAGE” does not seem at first sight to be a matter for popular exposition. But really there are many important and interesting questions which have been canvassed in committee-rooms or before subsidiary local inquiries with reference to the disposal of sewage. I remember in a Dublin Bill a learned Irish counsel who is now a distinguished Lord Justice in Ireland put a question to a witness with reference to sewage.

“I understand,” he said, “that Clontarf will not be satisfied unless it gets its sewage into its own hands?”

But whatever would satisfy Clontarf, one of the most important matters that a local authority has to deal with is that of the disposal of its sewage. My interest in the question has been increased by the fact that I have had several cases in which the important question as to the preservation of public health in connection with the

destruction of the effete and poisonous matters of the world has come into the issue.

On one occasion I had a case for the Corporation of Northampton, which proposed to take land for the purpose of extending or enlarging its sewage farm for the purpose of more efficiently purifying its sewage effluent by "broad irrigation." The land was at some little distance from the town and was not far from the residence of a General, who, not unnaturally, objected to what he regarded as an unsavoury neighbour. The Local Government Board determined to hold a local inquiry, and sent down one of its inspectors to make the investigation. A great many of the inspectors of the Local Government Board are retired army officers. Why they should make good judges or reporters in such matters I have failed to understand. In this case it was a courteous and apparently intelligent colonel who was sent down to make the inquiry. The General, who had what the house agents would have described as a desirable sporting and residential estate close to the land which the Corporation proposed to take for its sewage farm, opposed, and was represented by my learned friend Mr. Bidder, with his usual dogged pertinacity. Notwithstanding the opposition the Local Government Board made the order and introduced a Bill into Parliament confirming it.

The General again opposed, and that reminds me of rather a harsh joke which was made in an Exeter Extension Bill about a gallant general. Exeter proposed to take into the city certain lands which belonged to Sir Redvers Buller. At one time in the hearing before the Committee it was said that Sir Redvers who had been opposing had withdrawn, whereupon counsel for the promoters said, "It must be a mistake; Sir Redvers never withdraws—except across the Tugela," and as the gibe followed close upon his South African failures the humour was more pungent than it might have been.

But the particular general in the Northampton case did not withdraw and appeared boldly on his petition, again by Mr. Bidder, who put his short and stubborn back into the

opposition. At his instance the gallant colonel, the inspector who had made the inquiry, was called as a witness, and contrary to the ordinary rule but in accordance with the best and fairest practice, Mr. Bidder was allowed to cross-examine him. He did cross-examine him and glared at him through his bisected spectacles in a way which has made many a witness quake. If I remember aright he did not make much of his cross-examination and at the end of the ordeal the witness left the chair. As he was passing out he said to me, "It is a good thing he didn't ask me if I reported in favour of the order." "What," I said with some surprise, "you don't mean to say you reported against the order?" "Yes, I did."

Now I have told the story not because there is any amusement in it but because it throws a curious light upon the method and the efficacy of the sometimes much-praised Provisional Order system. An inspector is sent down and pretends to listen to the evidence and the arguments of counsel (although he need not take a note of what they say), and makes his report, and then the very clever department that does not know the place or its surroundings, that has heard nothing of the case, which may have gone on for days, sets aside the decision of its own inspector upon grounds which are not made public. It makes the local inquiry a farce; but some people have suspected that a good many of the local inquiries, if not overruled at Whitehall on the report of the inspector, are inspired from Whitehall before the inquiry is held. I have a vivid recollection of the inquiry into the federation of the six pottery towns which was promoted by the Corporation of Hanley—or was it promoted by the Corporation of Hanley or by the Local Government Board? It is certain that Mr. John Burns, at that time President of the Local Government Board, went down to the Potteries and made a most able speech in favour of amalgamation before any inquiry took place. When I had the brief for Hanley in my hands I found that the President had said everything that was to be said in favour of federation, and in that case I still think there was a great



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deal to be said. The President had endeavoured to persuade the six towns to agreement, but he failed, and as there was strenuous opposition there had to be a local inquiry, and consequently one of the experienced inspectors was sent down to make the investigation. But to some people who had read Mr. Burns' speech the whole of these proceedings seemed laughably ridiculous, for it was scarcely to be expected that an inspector of the Local Government Board would report against the course which the President had recommended in his excellent speech. One of my bold and learned friends who is still at the Bar and will continue to do what he thinks right notwithstanding its disagreeableness, refused for his clients, one of the six towns, to be a party to the pantomime, and gathering his robes round him—that is not strictly accurate, for on such inquiries counsel do not wear robes—but gathering up his coat-tails, he left the inquiry with some words which made the inspector uncomfortably red.

But here I did not mean to gird at the bureaucratic government or the government by officials or clerks in back rooms at Whitehall, but to say something that was interesting, if I could, about the large scavenging of towns, or in other words the disposal and destruction of our sewage.

Of this difficult matter I learned something in connection with an inquiry as to the carriage of the sewage of Manchester down to a place called Davyhulme. In that case I acted for the Corporation with Sir Joseph Leese and Dr. Pankhurst as my juniors. Sir Joseph, who tended towards foppery and was neat in his dress, bore himself well in comparison with Pankhurst. He—Sir Joseph—was at the time Recorder of Manchester and a Member of Parliament for some Lancashire constituency. Dr. Pankhurst was less "perjink," as the Scotch say, in his dress, seemed to be an ill-hung-together man, and had, although he was a man with strong democratic views, a penny-whistle voice which seemed a shrill and not very successful imitation of the intonation of what used to be called the softer sex. He had at one time been a member of the City Council. Although

the "team" was not an ordinary one we worked pleasantly together on the fussy but always shrewd instructions of Sir William Talbot, who was at that time town clerk. It was in connection with that and other such cases that I learned the little I know about anaerobic and aerobic bacteria.

About seventy years ago M. Cagniard Latour announced to the Paris Academy of Science that "beer yeast consists of small spherules which have the property of multiplying, and are therefore a living and not a dead chemical substance, that they further *appear* to belong to the vegetable kingdom and to be in some manner intimately connected with the process of fermentation."

That was the beginning of it. The statement astonished the scientific world, and people who thought they knew all about it raised their eyebrows and put their shoulders into their ears. I am not sure that it was not a German who likened the Frenchman to a cock scraping on a dunghill; and as the scrapings went behind him amongst them there was a precious jewel which was immediately picked up and used to some purpose by the exulting and more methodical German. Whoever said it spoke the truth. This great discovery of Latour was taken up by certain Germans, but ultimately it came back into the hands of the great Frenchman Pasteur, and the fact of the dependence of fermentation upon life has led to some of the most remarkable discoveries of our times. After this there was no doubt that bacteria would get the credit that was due to them, for it is true that the world would long ago have been nothing but a planet of manure, a dungheap or a cesspool, but for the infinite labours of those small lives which are more industrious and even more useful than Dr. Watts' "busy bee." M. Duclaux has explained that "whenever and wherever there is decomposition of organic matter, whether it be the case of a weed or an oak, of a worm or a whale, the work is exclusively performed by infinitely small organisms. They are the important, almost the only agents of universal hygiene, they clear away more quickly

than the dogs of Constantinople or the wild beasts of the desert the remains of all that has had life ; they protect the living against the dead. They do more. If there are still living beings, if since the hundreds of centuries the world has been inhabited life continues, it is to them we owe it."

It is a somewhat surprising view that bacteria are the benefactors and saviours of the human race, but their right to that tremendous credit has been definitely established.

Now the whole problem of the disposal of sewage is to give these indefatigable workers a chance of doing this world-scavenging work.

For a long time people's whole object was to keep the effete matters of the universe out of sight, and with that view they threw their sewage into rivers and into the sea. In Edinburgh in the old days they threw a good deal of it into the streets, and no wonder that they had a high death-rate in those dirty times. Of course if you can get your sewage into the sea, and can get it into the true current so as to prevent the return of the refuse to the shore, you are disposing of sewage in perhaps the best possible way, for there are in the sea hosts of bacteria ready to turn the decaying matter into harmless nitrates. This, in a sense not intended by Keats, is "Cold ablution round earth's human shores."

The ready means of removing a nuisance to a distance by throwing the refuse into rivers has, of course, had the effect of spoiling our streams and relieving us of a nuisance at the expense of our lower riparian neighbours. But of course there were large centres of population which had no means of securing the assistance of the destroying ocean or the carrier rivers in disposing of sewage ; and these had to resort to the use of land for sewage purification. One has been familiar for a long time with sewage farms with systems of broad irrigation or intermittent downward filtration, and people who adopted these methods were really cleverer than they knew. The Rivers Pollution Commission in 1870 recognised that purification of sewage did take place by passing it through the pores of the soil, or, as it was thought,

by filtration. But no one knew how the rapid transformation of the ammonia of sewage into nitrates by passing sewage through a few feet of soil took place until two French chemists, M.M. Schloesing and Muentz, in 1877, made some experiments with some earth from the Paris sewage farm. They treated their slab of earth with sewage and found that purification took place. Then they submitted the slab of earth to the fumes of chloroform, arguing that if the process of purification was filtration or merely mechanical the chloroform could make no difference, but if the purification was a vital process, carried out by means of living organisms, then the chloroform would make all the difference. And it did. After the earth had been submitted to the sleepy fumes the sewage went through the pores of the soil unchanged, for all the bacteria had been put to sleep, and it was only after they recovered from the chloroform that they recommenced their work of disposing of the sewage.

In the Manchester case we learned to distinguish between two different classes of bacteria which are both required to carry out the complicated process of purification. One of these works in the absence of air (very like counsel and witnesses in Committee-rooms of the House), and these are known as anaerobic bacteria ; and the other to which the presence of air is essential, and these are called aerobic bacteria. Those that work without air break down the complex organic compounds present in sewage, while the completion of the work is left to those germs which insist upon ventilation. In nature, of course, these two classes work side by side. In the sewage works they are separated and the one set works in its laboratory called the septic tank, and the other in contact or double contact beds of slag or clinkers or under sprinklers which supply the sewage which has been prepared for them ; and by this means a pure, almost pellucid, liquid is produced which is incapable of putrefaction and can be turned into rivers, or even more sluggish waters, with impunity. This is the magic of sewage disposal, and the wizards are these small bacteria.

CHAPTER XXVII

SPEECHES

If Good Speaker, not a Good Lawyer—A Suspicion of Glibness—Carlyle on Golden Silence and Silvern Speech—Stevenson's View of Talk—Windy Parliamentary Debates—The Backwater of the Parliamentary Bar—Making of Law not a Trivial Matter—Bills Involving High Monetary Issues more Important than Small Suits—Gift of Exposition—Importance of—Interesting Speeches and Clear Speeches—Committee Work Bracing—Opposition—Tact a Supreme Art in a Counsel—Emerson on—Long Speeches a Mistake—A Story of an Illustrious Judge's Boring After-Dinner Speech.

THERE is a compensating justice in the bestowal of reputations on men at the Bar. If a man is a fluent speaker, if he is persuasive to a jury, if he has some of the ornamental gifts of rhetoric and with these becomes a popular advocate, detraction dogs him and he is said to be "no lawyer." Indeed, one American was under such circumstances called "Old Necessity" on the ground that "necessity knows no law." If on the other hand his speech is slow and lumbering and creaks like an unoiled cart, if he is devoid of the power which makes the fireworks of oratory which delight these nurseries of children, "juries," he is declared to be a poor advocate but a profound lawyer.

It is strange that in a profession where speech is everything there should be a suspicion of glibness. But in these days there are many who hold to the doctrine that Carlyle preached with such incessant talking, that speech is only silvern while silence is golden—that, as he made Teufelsdrökh put it, "Speech is time, silence is eternity."

It is easy to gird at talk and praise deeds, to discredit

words and to respect action ; but, rightly looked at, the gift of speech is the supreme endowment of man, and all actions have been in words before they are born into the world and take their indelible place in history. Robert Louis Stevenson was right when he wrote, "There can be no fairer ambition than to excel in talk," and when he pointed out that "no measure comes before Parliament but it has been long prepared by the grand jury of talkers, no book is written that has not been largely composed by their assistance."

I have nothing to say in defence of the somewhat windy debates which are characteristic of Parliament and are often prolonged more for the advertisement of the speaker than for the advance of business ; but I have something to say against the under-estimation in which the profession as a whole holds its backwatered colleagues of the Parliamentary Bar. I say "backwatered," for it is a fact that those who devote themselves to Private Bill legislation are looked at askance by other members of the profession as if they were out of the main current of the stream and were idling behind Monkey Island. But it is a mistake to regard the making of the law as a trivial matter in comparison with the duty of finding out what the law says and means. It is a mistake to look upon the promotion of a Bill which may, like the Ship Canal Bill, mean the expenditure of £15,000,000 or £20,000,000, as a matter which could be entrusted to a tyro, while you look upon an action on a contract for £50 brought by John Doe against Richard Roe as a question which requires in the counsel the greatest gifts and the profoundest erudition.

Shakespeare was right when he said that "rightly to be great is not to stir without great argument," and for a Committee of Parliament to come to a right conclusion on any matter, say one involving the incidence of taxation, the putting an end to a Parliamentary agreement, the granting or refusing of running powers, it is all important that it should be thoroughly discussed by competent talkers. And that kind of talking is not such an easy thing as one might suppose, for the advocate before a Committee has to address

not a "learned" tribunal, but has to persuade four or five laymen who are unfamiliar with the matters dealt with ; and it requires a real genius for exposition to make technicalities not only plain but interesting to those whose minds only trudge in the ordinary round of the world's everyday grinding-mill. Huxley was quite as great in his gift of speech, of exposition, as he was in science, and the advocate who succeeds at the Parliamentary Bar must have some of these gifts, which are in my view greater than the mere remembering what was decided in *Banks v. Entwistle*, in *Meeson v. Welsby*—which was in all probability wrongly decided after all.

Now Samuel Pope had in a marked degree not only the ability to make dark things clear, but dry things interesting. And some others like Hope Scott had a charm of manner which pleased the Committee even when the matter that had to be discussed was painfully dull. He used to give a sound piece of advice to his juniors ; he said, " Be careful with your opening. If once you get your case well into the heads of the Committee it takes a great deal of evidence and argument to get it out again."

But the work in Committees is bracing work. The muscles are developed by wrestling, and brains are made sharper—as butchers' knives are—by having their edges rubbed against one another. The fact that counsel on one side are watched with intelligence by counsel on the other is a security that they must in their argument avoid the pitfalls of oratorical claptrap, for that weapon, the joke, is always ready to prick the bubbles of inflated speech. It is a very different thing to wrestle a fall with a competent antagonist in a Committee, and to sermonize from an uncontradictable pulpit in a church or chapel.

Of course one of the arts of speech is one that cannot be learned. It is tact.

What boots it thy virtue,
What profit thy parts,
While one thing thou lackest—
The art of all arts ?

I have known many advocates who by reason of that lack

have failed in their functions. It would be invidious in this connection to mention names, but some of these will occur to many : men of unquestioned ability who would quarrel with their tribunal ; men who, forgetting their client, would stand upon their trivial dignity ; men who, with or without provocation, would lose their temper, which is almost as bad as losing one's head ; men of parts but without tact. Indeed, to quote Emerson again,

This
Clinches the bargain,
Sails out of the bay,
Gets the vote in the Senate,
Spite of Webster or Clay.

Which shows that in his view this little art was more than the resounding gift of eloquence.

But one of the best weapons of tact, especially with a lay tribunal, is candour ; a man ought to have nothing up his sleeve. Another quality which commends speech is shortness. It is so easy to weary a tribunal that succinctness which is the exception should be the rule. Beware of yawns.

A story is told of an illustrious judge who took the chair at a great public dinner and had to make the speech of the evening. He made it—but made it too long. When the audience had suffered him for a patient half-hour they began to cry “Hear, hear,” with a slightly ironical intonation ; they clattered their plates and made all sorts of noises. But the tall and eagle-beaked chairman laboured on with his pretended extempore utterances. At last the audience, wearied out with his interminable talk, lost its good manners, the noise became deafening and one of the listeners went so far as to cry, “Shoot him !” He thought it was the only way to bring him down.

No speaker should go the length of making such a drastic termination necessary.

But now I have to make a confession. Although, as a rule, I do not think I made long speeches, in the Railway Rates inquiry I spoke for four days !

CHAPTER XXVIII

TRAVEL

Went to Singapore—Tanjong Pagar Dock Company's Case—The Tribunal and Counsel—Heat in Red Sea—Fellow-Passengers—Straits Settlements' Governor sent his Yacht to Meet me at Penang—Government House, Singapore—The Arbitration—The Case an Ordinary One—Voyage was Interesting—At Port Said—Blowing up of a Dynamite Ship in Suez Canal—Eastern Bank blown out—Singapore from the Sea—The Key to the East—Collyer's Quay—Raffles Plain—Sanitation—Motley Populations—The Chinese and Japs—The Club—The Suburbs—The Trees—A Malay Village—Tin—The Indian Ocean—Colombo—Dinner at the Club—Went by Night to Kandy—The Peradenia Gardens—Temple of the Tooth of Buddha—Back to Colombo and the *SS. Britannia*—Twenty Minutes in Africa—Left the Boat at Suez and Went to Cairo—Saw all Cairo the next Morning—Breakfasted at Shepherd's Hotel—Got Back to Port Said and Joined the Steamer in the Afternoon.

IN 1905 I was asked to go to Singapore to conduct an arbitration for the Government to ascertain how much was to be paid to the Tanjong Pagar Dock Company Limited, for the purchase of their undertaking under an Ordinance of the Colony of the Straits Settlements. Sir Michael Hicks-Beach, afterwards Earl St. Aldwyn, was to act as Umpire, Sir Edward Boyle, K.C., as Arbitrator for the Company, and Mr. James C. Inglis, the General Manager of the Great Western Railway Company, as Arbitrator for the Government of the colony. Lord Robert Cecil, K.C., Mr. Theo Mathew, Mr. Fort, and Mr. Ellis were the counsel for the Company, and I had with me Mr. A. R. Adams and Mr. L. M. Woodward.

I left this country about September 17, and went through the Red sea when the heat was at its prickliest. I had for my table companions Lord and Lady Jersey, who were going out to visit Lord Northcote in Australia; an American general who had fought in Cuba and who was going out to the Philippines, and his wife; Sir Archibald Hunter as far as Aden—a man I should like to have tapped for his reminiscences—and some others. I arrived at Penang early in October, and the Governor of the colony, Sir John Anderson, had been kind enough to send his steam yacht there to meet me. I reached Singapore on October 14, and the Governor, to overload me with kindness, was good enough to entertain me as his guest at Government House during my stay. The arbitration was, so far as the facts were concerned, complicated, but in principle it was simple and commonplace. All that had to be done was to ascertain the maintainable income of the Company and to find out how well or ill that income was secured, which would enable one to arrive at the multiple by which the income was to be capitalised. It was so commonplace that it is not worth while going into the facts.

We began our sittings on Monday the 16th, and the inquiry was finished about four o'clock on Thursday, October 26.—I was on board the P. & O. steamer by five and sailed for home at six. We were warned before we began that in the hot steam of that climate it would be impossible for us to work as we did in a more temperate England, but we tried, with the result that Sir Michael Hicks-Beach was taken ill and only sat to hear evidence and arguments for three out of the ten days, Sir Edward Boyle was ill and was absent for two or three days, and on one or two days the dilapidated tribunal consisted only of Mr. Inglis. One day Lord Robert Cecil was far from well, but some of us more wiry ones struggled on our perspiring way. To make up for these absences it was agreed that the whole of the shorthand notes of the proceedings should be carefully transcribed, edited, and printed; and it was probably with the assistance of the volume so produced, which runs to 600 or

700 folio pages of print, that the Umpire was enabled to make his award.

But although the case was commonplace and would be uninteresting to all those who were not engaged in it, some of the experiences of the journey still have a pleasant place in my memory.

On the voyage out Lord Jersey gave a dinner at one of the hotels in Port Said, and then, besides our various travelling companions, we met Major Johnson, who was at that time Manager of the Egyptian railways. He had come down to Port Said from Cairo to superintend the blowing up of a ship which had sunk in the Suez canal with eighty-five tons of dynamite on board. As a fact it was blown up the next day and the liner in which we were was the last to pass along the canal before the explosion which sent the water, they say, 2,000 feet up into the dry air of the desert and blew out 1,600 feet of the eastern bank of the canal, stopped the traffic for about a fortnight, but did no damage to Major Johnson's railway, which was on the western side of the canal. I mention Major Johnson, who is since dead, for he was exceedingly kind to us on our return journey; I will mention how in its proper place.

There are a good many people who ask questions which it is impossible to answer. If it were done with the view to nonplus the person to whom the question is put the success would be undoubted, but as the candid questions have a look of being in search for information they irritate more than they elicit. When I came back some people asked, "What struck you most in Singapore?" and that is a question which a whole book might answer, or to which flippancy might reply, "The direct rays of the sun." Others were curious to have my opinion as to the fruits of the Malay States. To answer these "in a nutshell" is a little difficult, but one can go towards an answer, even in miscellaneous pages.

I sailed into Singapore on a clear, wan morning, early, between islands which were still blue and with an east streaked with cream, the modest beginning of an oven day. The roads were full of sleeping ships and lolling junks. Fort

Canning was one of the few eminences which raised a head above the flat shores on which the town is built. I had the Cathedral, the Victoria Hall, and the Club pointed out to me. Very soon, even at an early hour, the harbour was fermenting with traffic. Sanpans moved everywhere. Lighters moved along like spiders with "sweeps" instead of legs at their fat sides. The day had begun. It is a business day in Singapore, and although the "morning and the evening" are not "the day" in the Key to the East, for there is the indomitable midday and afternoon to be reckoned with, they are by far the best of the day when one is so near the equator. The dawn is delicious, and the evening hour is an hour of prayer—or one of convalescence after the fever of the middle day.

Although the roadstead is impressive because it is the trysting-place of traffic, the town as seen from the sea has a mean look. The only place to see it to advantage is from the top of Government House, and from there it lies like a map below your feet, and the feathered country of the island and the soft blue hills of Johore are comely enough. You have also the sea glistening between Singapore and the Dutch islands to the south to sail the refreshed eye upon. But, as I say, from the sea the town is disappointing. Collyer's quay, which lies in front of you, has a stucco face. The trees on Raffles plain are pleasant seeing; Raffles hotel (everything is Raffles here) looks better from a distance than on a nearer view, and does not, I am informed, if you put up at it, persuade to a long stay in the capital of the colony. One thing struck me, and that was that although the town had what are called facilities for trade in the provisions which have been made by the Tanjong Pagar Company, it had comparatively few facilities for sanitation. Perhaps I should make an exception: it had a water supply which was fairly good and was being improved, but it had no drainage. That, in a town which has over 200,000 people in it, is a grizzly fact.

In driving through it in a morning one was struck by the fact that "motley is the only wear"—for the population

is a motley one. There are all sorts of men and women in Singapore. It is a museum of races. There are some 3,000 whites, largely British and mostly Scotch. There are immense numbers of Chinese of every different complexion, sometimes with skins as brown and glossy as a berry, or a Spanish chestnut, sometimes with a faded olive skin. These are Chinamen from different parts of China. Most of them have faces which are characteristically Mongolian, but occasionally you see some that are European in their contours. Then there are Malays and Tamels and Indians of various races, and some negroes with the pout of nature on their thick lips and the astrakhan of nature on their heads. Of course there are Germans, but no Jews. I think there is no town where the parti-colouredness of the human race is so much in bare evidence as here. There is, too, even in those that wear clothes, a curious diversity in fashion. On Edinburgh Road I saw a Chinese woman nurse in trousers, and an Indian man in a petticoat. Most of the people wear nothing before and nothing behind, and sleeves of the same. The head-dresses are as varied as the dress or undress of the body. You have turbans, fezzes; you have half-shaven heads, with pigtails sometimes hanging down behind, sometimes coiled up on the head. The rickshaw coolie wears bathing-drawers and a neck-tie.

As the Chinese are, I think, the most numerous, their houses and shops form most of the streets. There were wealthy Chinese there and you could see them in handsome landaus drawn by excellent horses, with two Indians, a coachman and a footman with his fly-disperser, on the box, in the streets of an afternoon. The Japs who are in the colony are mostly women who go about in rickshaws, but although they are well dressed they are not clothed with any repute in the colony. Indeed, it was curious to note that in Singapore, the way to the Further East, the current opinion is less favourable to the inhabitants of Japan than to the inhabitants of China. My acquaintance with the latter was limited. I had a "boy" who made a silent, punctual,

and excellent valet. He folded clothes with a neatness that was remarkable. But he was an unapproachable man, for his English was as limited as my Chinese, and we only met in silence and signs, but never quarrelled, even when some things which should have come home from "dobie" (the wash) did not ; indeed, I did not complain to him because I did not know how ; and when we parted he seemed satisfied with what I gave him in grateful remembrance. And that is about the first time in my experience that a "gift horse" has not been looked at in the mouth.

The bath, which was in a little room off my bedroom, was a large, deep earthen dish, and it had a liberal tap over it, which is not always the case. But the effects of a bath do not last long in Singapore. When you have it, for the time, as far as burning mosquito bites will let you, you feel good, but then you have to dress and that makes you feel hot and clammy again. You have breakfast—fruit, fish, kidney and eggs in one form or another—and you feel hotter and clammy and your white drill suit begins to cling and goes on clinging all the reeking day.

The club at Singapore is the institution for the provision of tiffin for the Europeans, and only comes to a head about one o'clock. I have no doubt it is a resort of many thirsty souls at other times, who quench and recreate a rampant thirst by innumerable "stingers." The broad veranda which overlooks the crowded bay and Johnstone's quay has sometimes its breath of air to give you.

The suburbs and surroundings of the town are attractive, the foliage varied and magnificent. If Singapore had nothing but its bamboos it would be lovely, but it has all sorts of tropical trees. It is a tame jungle. There are white-stemmed cocoanut palms soaring on taper trunks and holding a bunch of green feathers in the glaring sky. There are trees which put on autumn tints to-day and which will be green again in a fortnight. But the trees beggar description. They are the one beautiful feature of the island and the town's suburbs. You can see many friendly trees in the Botanical and Economical Gardens, which is a Sunday

afternoon resort for some of the people and all the nurses and children of Singapore. You can see there, too, the rubber-trees with their herring-bone slashes, the canals for juice—which are making fortunes for many in the Malay States and Singapore. But it is not only a vegetable juice which is filling their pockets: seven-eighths of the tin of the world is exported from the peninsula, and there are great familiar smoking chimneys to be seen beside the characteristic Malay village, a little town upon stilts, in Pulau Brani, and these are the chimneys of the great smelting works.

The flowers upon the trees and bushes are startling and beautiful. One tree I saw with green leaves and flowers as eye-wounding as is a red geranium. But everywhere the eye is captured by bright patches of colour, although a prying nose is doomed to disappointment. Even roses and pinks which have come from England, although they grow, have only a faint reminiscent smell of the perfume which at home makes a garden paradise. Birds here are too hot to sing, and you wish the crickets were; but they are not, and they shrilly screech for whistling hours. The bull-frog in the marshes has a voice entirely disproportioned to its size, but so have children, for that matter, as anyone can learn on board a liner. The place is a damp hothouse, and vegetation races and men perspire.

But most of the men have the old patriotic eye on Home, and look to leaving Singapore for good some day. I, too, have left it for good. But one thing struck me there; I hope it is altered now. It seemed to me that we were holding the key to the Further East in limp fingers. We were being beaten in our trade of transport by Germans and others. The Dutch ports were waking up. They have Java, which we gave up to them, and they protected their own shipping to these ports, and only allowed us to call at one of their ports, while they were free of Penang and Singapore. But Heaven forbid that I should make these recollections of travel a quarrelsome polemic.

I remember the Indian ocean well. There was a gorgeous

monotony about its hot days. We passed the peaked land of northern Sumatra ; we had seen the yellow slopes of the sharp-pointed mountains come down like bulging roots into the sea ; we had seen the forests, which began above these yellow slopes, clamber up towards the soaring crests, feathering and clothing the mountains the whole way to their searching summits. We had passed an island, a summit of a hidden mountain, passed the Achin Head with its white lighthouse, and now there was nothing but a blue-grey cloud in the distance behind us to which our smoke trailed lazily ; and now, but for that low cloud which was land, there was sea all round us, uncompromising, glistening sea, and sunshine, beautiful, merciless, dazzling sunshine above. The only air we had was what the lazy boat stirred as it pushed its way to the west over the sleek ocean.

There was no incident to attract the jaded attention of the sprawlers in the deck-chairs. Even a cargo steamer miles away would have been a relief. The lascars were standing on the rail tying up a corner of the canvas awning. The engine was beating through the metal pulses of the ship with its rhythmic thud, thud, and that was all. Was this magnificent laziness to go on for days ? We counted the hours of tyrannical gorgeousness until we should reach Colombo. The days were all the same. We made a spray of flying fish as we went, but even they palled on one. You could now and then see a grey rainstorm on the horizon, or sometimes you went sailing through the damp folds of such a travelling shower. Sometimes the sun was overcast, for there are ocean clouds, but the shade was as hot and breathless, as warmly damp as the sunshine. But the evening hour was a boon, when the sun sank magnificently in front of us and a world of cloud became a heaven of crimson and gold and purple, and in the zenith there was unfathomable blue. On either side of the ship on its throbbing journey there were piles of clouds like rampant bunches of grapes, and the faces of those to the westward shone with the sun's rays as Moses' face did when he had had his vision in Sinai. And when after a short time the day faded there was the



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respite of night and darkness and stars after the fiery furnace of the day. But to-morrow would be just the same, even the announcement of the ship's run excited only a languid curiosity. One felt a little spite at the captain if we only did 297 miles when we had done 307 the day before—"to dawdle here" when we wanted to get on and meet our old friend winter farther on the way!

It is an awful time when the only events are the meals and when hunger never gongs for one of them.

I daresay hundreds of travellers have suffered as I did, have longed as I did, but when the suffering is over have forgot as a mother does her suffering, for joy that they have arrived. And on the fourth or fifth day of our travelling (you cannot remember how many there were, for they were all alike, with the level sea, the slow roll, and the sunstroke light), we sighted another cloud on the horizon. There was interest again on board ship; people seemed to have risen from the dead, the dead doldrums of spirit which is the prevailing mood in the Indian ocean. We were near Ceylon. Ah, if it were only England! But we had our 6,000 weary miles to count yet.

We sailed into Colombo about 3.30 on a Thursday afternoon. It was too hot to go ashore just then and we waited on board until a gentleman sought us out with an invitation from the Manager of the Railways in Ceylon to use his saloon car to run up to Kandy, and an invitation from someone, I forget, I am ashamed to say, the name of our host, to dine at the club at eight o'clock. Having found out that the vessel would not sail until six o'clock upon the following day we went ashore. We drove for about two and a half hours through the town, along the esplanade, through the native quarters, past the markets, and reached the club about seven. One of our ship's party had been having a photograph of his fat person taken surrounded by natives, which really must have convinced his friends at home that he had been in the East and had for a time at least done the potentate.

There were a few green rollers breaking into white lace on

the shore, and the rank and fashion were driving when we got to the club. The esplanade upon which it stands runs to the Gall Face hotel and faces the west, where a heated sun was gradually sinking in the ocean with attendant clouds at his watery obsequies.

But perhaps the drive through the markets and the native quarters was more interesting than that through such rank and fashion as Colombo can boast. Population is "congested" where the natives live. The driver of our cab had to cry loudly to get a way through the thronging people. The shop-keepers were in their little cellar holes or at the mouths of them, the receipt of custom. The markets were full of noise and business as the darkness fell and as little glow-worm lights came out. And there, above all these noisy and sometimes noisome purlieus of this thick town, were the great light islands of space in their accustomed places, with their impressive silences above the querulous hubbub of the earth.

It is a most excellent club, airy and cool, with a spacious veranda all round the room where they have the newspapers, which is large enough for a ball and is used for that purpose on occasion. We had baths and then lay in long chairs with—if it is not a solecism—arms for our legs, until dinner time. Our host gave us an excellent dinner and we drove to the station between nine and ten. The manager's car, an excellent and comfortable one, had beds for three in it, and when we had said good-night to our friends the train started on its way and we turned in. The electric fans were buzzing and the outside air came in, bringing some mosquitoes with it through the open windows. For a time I lay awake to see the shadowy heads of palm-trees and banana trees slip by the window in the thin moonlight, but in time sleep came to me, notwithstanding a permanent way which might have been gentler to sleepers, and we went through the night in dreams.

It was then I suffered the ignoble stings of mosquitoes, which showed red and angry on wrists and knuckles for days afterwards, and had more of my attention than they

deserved. But notwithstanding these dastard blows I slept until in the first glimmering of dawn I awoke in a siding at Kandy station. It is the mornings that here, at 1,650 feet above sea level, are delicious. I do not wonder that Eastern peoples say their prayers at sunrise. It is a sacred hour.

At the station the hills rise somewhat abruptly all round, green with leaves. There are a few places on them where trees do not grow, and there the soil gleams ruddy and at other places it is covered by an inimitably green sward. It is like and unlike an exquisite highland scene at home, but for the jinrickshaw men who are hanging about. We had determined to use these placable morning hours for our drive and to return late for breakfast at the Queen's hotel. We had sent for a carriage, but as that was long in coming we got into rickshaws and went towards the hotel. Of course in an untoward world we were met by the carriage before we had gone a hundred yards, but continued up the steep and shady street in our man-drawn conveyances. At the hotel we transhipped, if that is not the wrong word, and drove out to the Peradenia Gardens, an exquisite place, where an obliging Cingalese man from the gatehouse conducted us and told us marvellous things. He showed us the nutmeg trees, the old rubber-tree, with its monstrous protruding roots which looked like the writhing forms of extinct reptiles. We saw experiments being made on the rubber-trees of commerce—exquisite crotons—thousands of flying bats (the vampire bat or flying fox), which darkened the morning light. We would, if we had learned all he taught us, have been filled full of knowledge, if our bags of memory could only have held it; but we forget facts and remember feelings, and these were all pleasant on that clear, crystal morning.

Our guide, with a comb of office like a tortoise-shell rampart in his hair, was affable and bland, and told us, of course, what interested him, and that was the plants and trees which were not of Ceylon but came from foreign parts—plants and trees which were only travellers and sojourners there

like ourselves. It would have been as unwise to form an opinion of the flora of Ceylon from the Peradenia Gardens as to hazard a similar deduction as to England's botany from Kew. Still, the walk and the drive overshadowed by the twinkling cloud of flying foxes when they were disturbed from their blood-to-the-head position on the branches of the trees where they hung like fruit, were pleasant in the early morning with the hills standing round in the young light and the fresh, nimble air.

Having bought some walking-sticks, said to have been made of the woods of Ceylon, we drove back to Kandy and went to see the Temple of the Tooth of Buddha. I have an immense respect for the "enlightened one," but none for his tooth, however authentic. Still, the temple was curious. In a pool by the entrance there were a number of tortoises, with their india-rubber heads above the green surface of the water. I suppose they were begging. The group of men that was there was certainly out for alms. One was blind and held out itching palms. Another had a deformed hand, but it was greedy, although crippled. An English-speaking guide took us in hand and explained the frescoes representing the Tax-collectors who took more than their due (that we understood), wicked priests, those who loved too much, and the rest. I daresay they are all in the guide book. The pictures were of the crudest, and the tortures and flames and thorns and reversed crucifixions of the severest. In the shade within the Temple there were sellers of sweet flowers, which were to be bought and laid as an offering somewhere; and before the door of the inner temple, the holy place where the tooth is, there was a priest chanting in a mumble his prayers. This disgusted one of my intolerant companions, for the superstitions of others are always ridiculous. There was a little piece of good stonework in the temple, but the colouring was crude and garish.

Now having "done" (that is the tourist's creed) the temple we got back into the carriage and "did" the artificial lake, which was made beautiful even in its artificiality by the hills and trees that surrounded it, and then back to the

hotel. The hotel is a good one and the breakfast was excellent. After that we were subjected to the "dun" of the seller of silver in the veranda where we smoked, and perhaps to avoid him we started for the station and walked down the hill through the markets and so to the saloon car.

The station-master had put the car at the end of the train so that we might see the views on our way down to Colombo, and had put a bunchy posy of the flowers of Kandy on the table, a courtesy which is rare in railway officials. We started punctually with a lunch on board, and proceeded slowly on our way through tea gardens until we came, a few miles down the line, to scenery which it was worth going miles and miles to see. Nothing could be finer than the mountain land we saw from our high perch on the hills, where we were six or seven hundred feet above the valley virulently green with paddy fields or brown in preparation for the sowing of rice; beyond the valley there were fine azure peaks, and in one place a great block or table mountain. These, however, were not the threadbare hills we are accustomed to at home, but were clothed and in their right mind, beautiful in shape, lovely with jungle forests of coconut palms, bananas, bamboos, and a hundred other beautifully leafed trees whose names I did not know, notwithstanding the "courtesy of their greeting."

The hedgerows, too, which we passed were, as George Eliot has it, "liberal homes of unmarketable beauty," or as Goldsmith, anticipating her, had it, hedges "unprofitably gay." I never saw such wealth in flowers, some red and flaunting, the hibiscus, others as yellow as a canary, called alamanders, I think, and hundreds of others all gladdening the eye.

But we were descending rapidly, and soon passed "Sensation corner," where you look sheer and giddy into the valley far below, and so down, down, to the hot jungle-covered plain and over that for fifty miles to Colombo. When we got on board the boat (SS. *Britannia*) in the harbour, and at last got away into the calm sea of Arabia in

the darkened evening, we felt that we had had a day compacted of sweets, a day which would for years be a pleasant and fragrant memory.

It was Artemus Ward who gave a lecture which he called "Twenty Minutes in Africa," and many people are of opinion that a comparatively small number of minutes judiciously expended is enough for a great dark continent. I have, however, lavished at least twenty-four hours on Africa. There is an old proverb which advises you to live a year and a day in a land before speaking of it, but that is a proverb which must have been made for slower days than ours, or for men with lives like Methuselah. Sharp eyes can see enough to "speak about" in a few hours, and longer experiences only dull and obscure the first impressions, which are everything.

We arrived at the port of Suez on an afternoon in November. We had seen the red hills of Arabia Petraea, the low, sandy shores through which we approached the northern end of the Red sea. The houses of the old town of Suez shone out white along the shore and among the green trees which grow near the sea. These greens were a rest for tired eyes which had been pestered with uncompromising ruddy rocks and the horrid yellow sands.

The sun was going down when a lady doctor came on board to inspect and examine the passengers. This was one of the sanitary farces which was played on the homeward journey. We all went into the saloon, and as our names were called we passed before the vigilant, diagnostic eye of the lady doctor, and after this parade the ship was free to enter the canal. But before it did that we had a message from Major Johnson that he would come down and meet us at Suez and go up with us to Cairo. That determined us, and accompanied by the Suez station-master we got on board a small steamer to go ashore. We had got a permit to land from the purser, another farce, it seems, and even with that we had to go to a certain landing-stage on our way, for another pretence medical examination, where we got a further certificate of health and then sailed on to a place near the station where

Major Johnson met us. Even here, however, our hand-bags had to pass the Customs, and then after all this comedy business we were free to go to the train.

We went by an ordinary train from the dock station to the station of the old town of Suez, and here Major Johnson had promised us a cup of tea and called on a lady with the view of carrying out his promise by means of her teapot. But it was Sunday and the lady was properly at church. There was, however, a forbidding-looking café only over the road and we went there and had our tea while the day was making one of his impressive gaudy exits. After tea we started to walk through some of the streets, now lighted up, of the town. It is quite an old town and Eastern in everything. The East is full of busy idleness. The streets are full of people, but it is not traffic. The shops are all open, but the sellers loll and gossip. It was an interesting stroll. The lighted shops open their fronts to the streets, and the figures in them and about them and the lights and shadows made pictures at every turn to hang on the walls of memory. We walked through these cramped streets and back to the station, where Major Johnson's saloon car was attached to the train for Cairo, and soon we were on our way. Of course as we were "railway men" we were critical, guessing the weight of the rails, praising the "permanent way," and so on. So we ran along the Bitter Lakes and reached Ismailia. Here we had some time to wait and inspected a spick and span, ruler planned French town. It was only inhabited by officials and others connected with the canal. The streets are tree planted, there are gardens in the midst, the old and native town is hidden away quite out of sight, and nothing but the villa residences is seen.

From Ismailia we went towards Cairo in the dining car, and had an excellent dinner on the way. We passed Zagazig and by moonlight saw the trenches and lines of Tel-el-Kebir, and heard the story of the taking of the citadel of Cairo. We arrived in Cairo at about eleven-thirty, and we slept in Major Johnson's car in luxury and mosquito

curtains. How mosquitoes get inside the curtains is a mystery, but they do, and one visited me in the night and left its mark and a thrilling, itching memory on one of my knuckles. I suppose one can be made immune, but I do not know.

In the morning tea was brought us from the refreshment room soon after six, and before seven we were out of the car, having had time to watch the ablutions under a tap and the prayers on a mat of several Egyptian railway officials. We had ordered a carriage, and a man whose skin was khaki, whose knowledge of English was small, but who eked it out with an excellent smile, got on the box and drove us through the streets of Cairo. At first we were in a French town, it would seem, with stucco houses of large size, with trees in all the streets, then we were out, past a large barracks and a Pasha's palace overlooking the Nile. Now we saw the great river which has made a fan of good growing country out of a desert of sand by its beneficent mud. Here the banks were lined with diabeahs and river steamers, many of them a-flutter with flags. Now we were driven round the racecourse, past the Palace hotel, and got a glimpse of the Pyramids in the fresh morning air, round some suburbs, and then back to Cairo.

We asked to be driven to the native quarter and the Mosque of Mahomed Ali, and our conductor smiled and drove us past the Savoy hotel to the Continental, and then to Shepherd's. More explanations, however, made him understand, and we were driven in and out of the narrow streets, some of which had projecting buildings jutting over the street and shutting out even the strip of sky which is in most places the crown of these street scenes. Here again the number of people is great, but the idling gigantic. There were many people on donkeys, a sedate means of progression. The fellaheen have lungs and they cry out a great many times, which makes you think they are busier than they are.

We went through dozens of these crowded streets, past a dozen Mosques, and then up the steep street to the Citadel and the Mosque of Mahomed Ali. There is much crumbling

architecture on the way up, but even the decay in Egypt is picturesque, and these crumbling walls have fine warm colours on them in the morning light of a Cairo day, with its naked sky. At the mosque we found slippers for our feet. We paid for these and for the voluble services of a guide who spoke English, told us the guide-book stories, and showed us the magnificence of Cairo from the battlement. That view was greater than the mosque with its two slender minarets piercing the morning, with its likeness to St. Sophia at Constantinople. Here was Cairo at our feet in its morning bath of light, all the buildings of the town just below us, the ruins of the Roman aqueduct on our left hand, a great pyramid in front, and some minor stone mountains higher up the river.

The guide pointed out where the Khedive lived and which was Lord Cromer's house, but these did not interest. It was this old town, the Mother of Cities in all the beauty of a common Egyptian dawn standing at the apex of the delta where the blessed Nile is threaded out into channels and mouths which make the country green and make that watered triangle between the city and the sea the most fertile land on earth, which really interested. The town beneath us was weaving like a loom the same web of life that was woven there thousands of years ago, with its motley population like dusky shuttles going to and fro in the morning.

But it was time to retrace our steps. Having satisfied cormorant guides who insisted on brushing the dust from our boots, we got into the carriage and drove down and round until we came to Shepherd's hotel, where after a little time an excellent breakfast was served. And a breakfast at nine-thirty or ten is much better when you have been driving in the air two and a half hungry hours. After breakfast we sat and smoked on the terrace, where the Americans were rustling newspapers, and so the morning passed until it was time to make our way to the station.

Our smiling guide was there to lead the way. The train was to leave for Port Said at eleven, and we found the saloon car again at our disposal and Major Johnson and several others had come to see us off. We started to the

minute, and saw the delta with all its richness, its rice fields, its sugar-canes, its date palms. Here and there there seemed to be fairs or markets; everywhere the narrow roads were being threaded by donkeys or by men on sea-sickening camels. Some of them went on bare feet, like the boys in a "clachan" at home. Beyond Zagazig we left the green watered lands and came to rolling desert, and how it scorched us in the saloon! The hot reflection came in and stung us where we sat, and yet we saw villages where people lived on this gridiron of sand.

So we went on to Ismailia and then down the side of the canal to Port Said. We were there by about three-thirty, on board the *Britannia* by four, and she was under way into a boisterous Levant by four-thirty. The Mediterranean was distinctly uneven. Cold winds struck it from the snows of Crete, and occasionally there was the milder journeyman wind from the south-west, but somehow between them they had worked up the plastic waters into a fury, and the great ship was troubled in her course; and so indeed were some of the pale passengers.

INDEX

- ABERDARE**, Lord, 92, 160
Accounts, 123
Adams, A. R., Mr., 275
Adamson, Daniel, Mr., promoter of Ship Canal, 20
 "Adaptability, Special," 257
Aerobic bacteria, 270
Aerodrome and special adaptability, 259
Ainger, Canon, Master of Temple, 143, 144
Aird on Carlyle, 136
Aird, Thomas, Mr., 133
Aitken, Prince, 134
Alderson-Foote, Mr., K.C., book quoted, 67
Alfred, Prince (Duke of Saxe-Coburg Gotha), 4
Alkali trade and competition with Gas Companies, 32
Amalgamation of railways, 18
Amalgamation, London, Tilbury and Southend, 153
Anaerobic bacteria, 270
Anderson, Lord, 241
Anderson, Sir John, 276
Arbitrations, 203
Ardmillan, Lord, 6
Arklett Loch, Glasgow] water scheme, 29
Asher, Alexander, Mr., 5, 241
Ashington Urban District Council Bill, 154
Aspinall, Mr., K.C., 165
Asquith, Mr., 109
Attorney-General and retainers, Questions as to, 182
Auckland, Lord, 160
Auction Clauses in Gas and Water Company's Bills, 47-48
Austin, Mr., 15
Austin, Alfred, Poet Laureate, 138, 139
Avebury, Lord (Sir John Lubbock), 141
BACTERIA, aerobic and anaerobic, 270
Baggallay, Claud, Mr., Q.C., 74, 89
Bailey, Sir Joseph (Lord Glanusk), 159
Baker, Sir Benjamin, 191 n.
Balfour Browne, J. H., at University of Edinburgh, 2; in Professor Masson's class, 2; met Dr. John Brown, 2; Secretary to Speculative Society, 5; went to Bar, 7; "dockers," 8; and Campbell Foster, 8; with Digby Seymour, 9; his father, 11; gave evidence in certain cases, 239; gave evidence as expert, 242; director of a company, 255; defendant in an action, 256
Balfour, Mr., 211
Balfour, Professor, 3
Balfour, A. J., Mr., quoted, 190
Balfour of Burleigh, Lord, as arbitrator, 216
Balfour of Burleigh's Private Bill Procedure (Scotland) Act, 240
Balfour, John Blair (Lord Kinross), 5, 78, 241
Bar, Members of, 85
Bar, Parliamentary, what it does, 13
Barking and Crossness joke, 98
Barry, Sir John Wolfe, C.E., 191 n., 212
Barton aqueduct, 216
Bateman, Mr., C.E., 191 n.
Batten, Mr., 229
Beckett, Sir Edmund, 15, 44, 48, 51, 52, 53, 152, 158, 162
Bell, Sir Hugh, 39
Bere, M., 22
Bidder, Mr., Q.C., 57, 65, 67, 68, 69, 177, 265
Bidder, Mr., C.E. (the calculating boy), 65, 66
Binnie, Mr., 206
Birmingham Extension Order, 220
Birmingham Gathering Ground, View of, 117
Blindness of Milton, Poem on, 2

- Blyth, Hall, Mr., C.E., 191 *n.*
 Bompas, H. M., Mr., K.C., 166
 Bosanquet, Sir Alfred, K.C., Common Sergeant, 147, 148
 Boundaries, Extension of, 217
 Boyle, Sir Edward, K.C., 90, 275
 Bramfontein Water Company, 211
 Brampton, Lord (Sir Henry Hawkins), 204
 Bramwell, Sir Frederick, 191, 197, 250
 Bramwell, Lord, Thames Sewage inquiry, 98
 Branch lines as feeders, 126
 Branch railways, 111
 Brett, Mr. Justice (Lord Esher), 9
 Briefs badly drawn, 233
 Brine pumping and surface damage, 192
 Bristol Corporation and rival docks, 174, 175
 Brougham, Lord, 4; Portrait of, by Sir D. Macnee, 5
 Brown, John, Dr. (*Rab and His Friends*), 2
 Browne, Sir James Crichton, 11
 Buller, Sir Redvers, opposing Exeter Extension, 265
 Burns, Robert, mausoleum, 134
 Burns Street, Dumfries, 135
 Burns, John, Mr., President of L.G.B., 266
 CAIRO, 289, 290
 Calculating boy, The, 65, 66
 Caledonian Railway Company and peace agreement, 204
 Cambridge Corporation application to be made county borough, 225
 Cambridge Corporation Extension, 224
 Cambridge Water Company's scheme, 96
 Campbell, Mr., K.C., 208
 Canals, Lord Shuttleworth's Commission, 176
 Capital and Revenue, 124
 "Capping," 3
 Carlिंगford, Lord, as to Private Bills, 151
 Carlyle, John, Dr., 135
 Carlyle, Thomas, 73, 134, 135, 136, 137, 206
 Carriage expenses of Railway Companies, 128
 Cash, Mr., 129
 Casting vote, 160, 161, 162
 Castle, E. J., Mr., Q.C., 130
 Caterham case, 224
 Cave, Mr. Justice, 181
 Cecil, Lord Robert, 74, 215, 243
 Ceylon, 283
 Chairmen and Committees, 155
 Chairman of Committees in House of Lords, 156
 Chamberlain, Richard, Mr., 176
 Chambers, Sir Thomas, Recorder of London, 140
 Chancery Courts and continuing injunction, 105
 Chatsworth arbitration, 214
 Cheyne, Sir John, 5
 Chichester Fortescue as to Private Bills, 151
 Chinese in Singapore, 279
 Chlorinization of water, 96
 Christopher North (Professor John Wilson), 4
 Claims of contractors, 247
 Clark, John, Mr., Q.C., 59
 Clarke, Sir Edward, K.C., 253
 Clabon, Mr., 236
 Clergymen as witnesses, 187
 Clients, 232
 Clifford, Frederick, Mr., K.C., 86
 Cockburn, Lord, 4
 Collins, Mr. Justice (Lord Collins), 108
 Collins, Sir Arthur, 168
 Colombo, 283
 Colonsay, Lord, 6
 Commission Railway, 103
 Committees and chairmen, 155
 Companies and corporations, 36
 Company's Clauses Act and borrowed money, 47
 Compensation water, 101
 Competition of Railway Companies, 16
 Competition of Gas Companies, 31
 Compressed air, Boring by means of, 250, 251
 Compulsory acquisition of property, 16
 Compulsory Purchase Bills, 38
 Consolidated Gold Fields of South Africa, 210
 Constant, Benjamin, 4
 Consultations out of Court, 254
 Contractors' claims, 247
 Cooke, Temple, Mr., Recorder of Southampton, 131
 Cooper, Mr., 235

Corelli, Miss, on Glasgow's Loch
Voil scheme, 30
Corporations and companies, 36
Corporations subscribing to com-
pany's capital, 173
Cottesloe, Lord, 160
County borough, Application to be
made, 225
Courts of Law and legislature
loggerheads, 110
Cowan, Lord, 6
Coward, Lewis, Mr., 74
Cranbrook, Lord, 151
Cripps, Sir Alfred (Lord Parmoor),
19, 57, 109
Cripps, H. W., Mr., Q.C., 71
Cunningham, Mr., C.E., 191 n.
Curriehill, Lord, 6

DANCKWERTS, Mr., K.C., 90, 131
Davey, Sir Horace (Lord Davey),
77, 78, 79, 80
Deacon, George, Mr., C.E., 250
Deas, Lord, 6
Depreciation and sinking fund, 131
Derwent Valley Water Board
Arbitration, 214
Derwent Valley Water Scheme, 27
Devonport extension order, 220-
221
Devonshire, Duke of, Committee,
224
Dinner to C. A. Russell, K.C.,
253
Dinner to Sir Edward Clarke, K.C.,
253
Dinner to Sir Edmund Beckett,
K.C., 253
Dinner to Lord Justice Lush, 253
Dinner to Lord St. Helier, 253
Disease and flies, 121
Disposal of Sewage, 264
Disraeli and the Lord Rectorship of
Edinburgh University, 206
Divorce Bills, 218
Divorce Division and Admiralty,
254
"Dockers," 7
Dodson, Mr., Proposals as to Private
Bills, 150
Doine Loch, Glasgow's proposal as
to, 29
Dorrington, Sir John, 159
Duclaux, M., 268
Dundas, Lord, 241
Dunedin, Lord (see Graham Murray),
59, 241

EAST LONDON Water Company, 94
Eastbourne Corporation Water Pur-
chase Bill, 41
Easton, E., Mr., C.E., 191 n.
Eaton, Mr., C.E., 191 n.
Eglinton, Lord, opposition to Bill,
77, 78
Electric Supply Company Arbi-
tration, 213
Electric Traction, 26
Electrical undertakings, Purchase
of, 33
Electricity under the Electric Light-
ing Acts, 33
Ellis, Sir Adam Gib, 5
Ellis, Mr., 275
Emerson on tact, 273, 274
Emly, Lord, 160
Esher, Lord, Mr. Justice Brett, 9, 156
Evidence, As to giving, 239
Expert evidence, 240
Experts on the Bench, 240
Extension of towns, 217
Extension, Plymouth, 220, 221
Extras, Contractors' claims for, 248

FACILITIES, Reasonable, 110
Faringdon, Lord (Sir Alexander
Henderson), 21
Field, Mr. Justice, 181
Financial adjustments, 224
Financial witnesses, 198
Flies, 121
Folkestone Corporation Water Pur-
chase Bill, 41
Foote, Alderson, Mr., book quoted,
67
Forbes, James Staats, 197, 204
Forster, W. E., Mr., 159
Fort, Mr., 275
Forth Bridge, Witness as to, 238
Foster, Mr. Campbell, 8
Fowler, Sir John, C.E., 191 n.
Frankland, Sir Edward, 39, 99
Freeman, Mr., K.C., 74
French, Mr., K.C., 250
Fry, Sir Edward, 212

GAIN, Mr. Lawrence, 232
Gas Companies and competition, 30
Gas Companies districted London,
31
Gas Companies and sliding scale, 31
Gas Companies and alkali trade, 32
Gas profits of Birmingham, 28
Gathorne Hardy (Lord Cranbrook),
151

- General retainers, 183
 General retainers and Bradford Corporation, 184
 Geological evidence, 195
 Germs, aerobic, 270
 Germs, anaerobic, 274
 Gibson Craig, Sir William, 6
 Glaisher, Mr., 101
 Glanusk, Lord (Sir Joseph Bailey), 159
 Glasgow Extension Bill, 220
 Glasgow's Bill to get water from Lochs Voil and Doine, 29
 Glasgow, View of, 118
 Gochen, Mr., Three cheers for, 3
 Golf with a town clerk, 238
 Graduation address, 3
 Graham, Mr., C.E., 191 n.
 Graham Murray (*see* Lord Dunedin), 59, 241
 Graham White as a witness, 260
 Grahame, Alexander, Mr., 151
 Greathead's shield, 250
 Green, Sir Henry R., 255
 Gregory, Professor James, 4
 Grimthorpe, Lord (*see* Beckett, Sir Edmund), 15, 44, 51, 52
 Grubb, Mr., 236
 Gully, Mr. (Lord Selby), Speaker, 143
 G.W.R., what it stands for, 158
- HAMILTON, Sir William, 4
 Hanley Corporation and Federation, 266
 Hansard Debate on Liverpool and Manchester Railway, 1825-6, 23
 Harcourt, Sir William, 88, 150
 Hardy-Gathorne (Lord Cranbrook), 151
 Harris, Mr., C.E., 191 n.
 Hartlepool case, 224
 Hawkins, Sir Henry, 204
 Hawkshaw, Sir John, C.E., 191 n.
 Hawksley, Mr. Thomas, C.E., 40, 53, 92
 Heller, St., Lord, Dinner to, 253
 Henderson, Sir Alexander (Lord Faringdon), 21
 Herkomer, Herbert von, R.A., 139
 Herschell, Lord, as arbitrator, 209
 Hertfordshire's complaint as to abstraction of water, 243
 Hesse, Prince William of, 4
 Hogg, the Ettrick shepherd, 134
 Hollams, Sir John, 234
 Holmes, Oliver Wendell, quoted, 167
 Honeyman, Mr. Justice, 10
 Hope, Lord, President, 4
 Hope Scott, Mr., 15, 42
 Horne, Mr., K.C., 241
 Horner, Francis, 4; portrait of, 5
 House of Lords, Chairmen of Committees in, 156, 157
 Houston, Dr., on London water, 95
 Hull Corporation subscribed to Hull and Barnsley capital, 174
 Hull Docks, Acquisition of, 176, 177
 Hull and Barnsley Railway Company and North-Eastern Railway Company, 18
 Huskisson, Mr., 23
 Hutchinson, Mr., K.C., 89, 90
 Hutchison-Stirling, Dr., 2
 Hydrogeology, 194
 Hypothetical tenant, The, 129
- IBBETSON, Sir Henry Selwyn, 159
 Imperial Tribunal, Parliamentary Committees, 164
 Improvement of hereditament distinguished from repair, 125
 Indian Ocean, The, 281, 282
 Inglis, James C., General Manager of Great Western Railway, 275
 Iron Company's works, View of, 114, 117
 Ismailia, 289
- JAMES, Sir Henry (Lord James of Hereford), 81, 82, 83
 Japanese in Singapore, 279
 Jeffrey, Lord, 4
 Jersey, Lord, 277
 Jeune, F. (Lord St. Helier), 73, 253
 Johannesburg Water Company, 211
 Johnson, Major, 277
 Johore hills from Singapore, 278
 Jokes in Court, 142
 Juniors, Some of my, 226
 Juniors, Some letters from, 230
- KANDY, 283, 285
 Katrine Loch, Glasgow water scheme, 29
 Kay-Shuttleworth, Sir Ughtred (Lord Shuttleworth), 160
 Keen, Mr., 129
 Kelvin, Lord (Sir William Thomson), 20
 Kemball, General Sir Arnold, 255
 Kennaway, Sir John, 155
 Key to the East, The, 278
 King's share in New River Company, 212

- LAKE DISTRICT, View of, 118
Lancashire and Yorkshire Railway Company opposing Mono-rail, 23
Langsett scheme, 93
Lankester, Forbes, K.C., 57
Lansdowne, Marquis of, 4
Latour, M. Cagniard, 268
Lauderdale, Lord, 160
Lawrence, John (Mr. Justice), 7
Leaders, Some of my, at the Parliamentary Bar, 50
Leaders, Some of my, outside Parliamentary Bar, 72, 73
Ledgard, Mr., Q.C., 88, 245
Leeman, Mr., as to Private Bill Legislation, 151
Leese, Sir Joseph, 267
Legislature and Courts of Law loggerheads, 110
Leicester Corporation aqueduct, 94
Leigh, Hon. Chandos, K.C., K.C.B., 255
Leonard, Mr., K.C., 211
Leslie, Mr., 237
Level crossing and public safety, 178
Lister, Mr., C.E., 21
Littler, Sir Ralph, K.C., 60, 61, 62, 74, 196, 232, 245
Liverpool Corporation and the docks, 174
Liverpool Corporation aqueduct, 94
Liverpool and Manchester Mono-rail Railway, 22
Liverpool and Manchester Railway, 1825-26, 23
Livery, Sir George, C.E., 191 n.
Llandaff, Lord (*see* Henry Mathews), 72
Lloyd, Honoratius, Mr., K.C., 207
Local and Personal Bills, 16
Local self-government, 222
Loch, Mr., 236
Loch Katrine supply to Glasgow, 27
Lockhart, John Gibson, 4
Lockwood, Sir Frank, 8, 9, 145
Locomotive expenses on railways, 128
London, Chatham and Dover Railway Company and peace agreement, 204
London Dock Companies and Sterilization Clause, 45
London and North-Western Railway Company opposing Ship Canal, 23
London, Tilbury and Southend Railway Amalgamation, 152
London Water Companies, Purchase of, 45; Bill for purchase of, 261
Lords, House of, Committees in, 160, 161
Lubbock, Sir John (Lord Avebury), 141
Lumley Smith, Mr., Q.C., 98
Lump sum fees, 207
Luncheon, No adjournment for, 163
Lush, Mr. Justice, 196, 232
Lush, Lord Justice, Dinner to, 253
Lyttleton, The Right Hon. Alfred, 171
McDONNELL, Lord, 243
McGowan, Town Clerk, Bradford, and retainer, 184
McLean, Sir Francis, 170
Mackintosh, Sir James, 4
MacLagan, Sir Douglas, 6
Macmillan, Mr., K.C., 241
Macnamara, Mr., Railway Commissioner, 107, 169
Manchester Corporation subscription to Ship Canal, 174
Manchester Corporation and Countess Ossalinski, 258
Manchester sewage disposal, 267
Manchester Ship Canal, 19, 174
Manchester and Liverpool Electric Railway, 22
Mansergh, Mr., C.E., 191 n., 197
Martin, Sir Theodore, 151, 236
Marylebone Borough Council, 213
Masson, Professor David, 1
Master of the Temple, Canon Ainger, 143, 144
Masters in Lunacy, 170
Mathews, Henry, Mr. (*see* Lord Landaff), 72
Mathew, Theo, Mr., 275
Mathews, Sir Charles, 17
Medical Jurisprudence of Insanity, 11
Mellor, John, Mr., Q.C., 181
Memoirs and Portraits, R. L. Stevenson, 4
Meredith, George, reader to Chapman and Hall, 137
Merryweather, Mr., Some stories about, 42, 54
Mersey Dock and Harbour Board, 20, 21
Metropolitan Water Board Scheme, 95

- Meymott Tidy, Mr., 39, 97
 Michael, Mr., Q.C., 86, 98, 99
 Middlesbro' and Stockton water undertaking purchase, 38
 Miller, A. E., Mr., K.C., 169
 Milward, Mr., K.C., 165
 Moncrieff, Lord Advocate, 6
 Mono-rail, 22
 Moon, Ernest, Mr., 109
 Morals and amalgamations of towns, 189
 Morley, John, Mr. (seat for Mon-trose Burghs), 87
 M. S. & L., what it stands for, 158
 Mure, Lord, 6
 Myddleton, Sir Hugh, 212
 Mystery, The, 70, 71

 NEAVES, Lord, 6
 New River Company Arbitration, 212
 New River Company and Sir John Hollams, 234
 No mean city, 217
 "Non-contents have it," 161
 Northampton Corporation sewage farm, 265
 North British Railway Company and peace agreement, 204
 North-Eastern Railway monopoly, 18
 North-Eastern Railway and Hull and Barnsley Railway Company, 18
 North-Eastern Railway attempt to purchase Hull Docks, 176, 177
 Novel, My first, 137

 OCEAN, The Indian, 281, 282
 O'Hara, Mr., 86
 "Old Necessity," 271
 Orders, Provisional, 219, 220
 Ossalinski, Countess, case, 258
 Owen, Sir Hugh, 212
 Owner, Value of property taken to, 257

 PAGET, Sir Richard, 159
 Pankhurst, Dr., 267
 Parliament and Private Bill legis-lation, 16
 Parliamentary Bar, what it does, 13
 Parliamentary Bar, a backwater, 272
 Parliamentary proceedings, Cost of, 219
 Parmoor, Lord (*see* Cripps), 57, 207

 Peace agreements of Railway Com-panies, 204
 Peate, Sir William, 129
 Peel, Sir Frederick, Railway Com-missioner, 107, 108
 Pember, Mr., Q.C., 19, 62, 63, 64, 74, 254
 Penny, Mr., chemist in trial of Pritchard, 205
 Philbrick, Mr., K.C., 166
 Pickford, Lord Justice, 250
 Pixley, Mr., 129
 Plender, Sir William, 129
 Plymouth Extension, 220
 "Poachers," 164
 Pollock, Erskine, Mr., K.C., 88, 245
 Pomona Gardens arbitration, 214
 Pooling arrangements, 127
 Pope, Samuel, Mr., K.C., 50, 56, 74, 139, 273
 Potteries federation, 266
 Preference, Undue, by Railway Companies, 106
 Price, Mr., Q.C., 181
 Price, Mr., Railway Commissioner, 107
 Pritchard trial, 205
 Pritt, Ashby, Mr., 236
 Private Bills, Cost of, 219
 Private Bill Legislation, 148
 Private Bill Procedure (Scotland) Act, 240
 Private enterprise, what it has done, 44
 Private enterprises and Sterilization Clause, 45
 Property and compulsory purchase, 261
 "Property is theft," 260
 Prospective value, 257, 261
 Provisional Orders system, 219, 266
 Public safety and level crossing, 178
 Pulau Brani, 281
 Purchase Bills, Compulsory, 38
 Purchase, compulsory, Allowance for, 261

 QUEEN VICTORIA opened Ship Canal, 1894, 21
 Queen's shilling, 180

Rab and His Friends, Author of, 2
 Race course case, 214
 Raeburn, Sir Henry, Portraits by, 4, 5, 139

- Railway and Canal Traffic Act, 1888, 105
 Railway Commission, 103
 Railway competition, 16
 Railway monopoly, 104
 Railway peace agreements, 204
 Railways and tramways, 17
 Railways, Optional purchase of, 37
 Railways' power to vary Tolls, 105
 Railways, Private Sidings Act, 112
 Railways, Working expenses of, 128
 Rainfall, 101
 Ram, A. J., Mr., K.C., 63
 Ramsay, Sir William, in Yarmouth Bill, 100
 Rates, Through, on railways, 113
 Rating cases, Accounts in, 127
 Rawsley, Canon, on Loch Voil scheme, 30
 Reading with a barrister, 123
 Rees, Mr., 236
 Referees, Court of, 152
 Reid, Sir George, P.R.S.A., 139
 Reinstatement of electrical undertaking, 215
 Reinvestment, Allowance for, 262
 Retainers, 180
 Revenue and capital, 124
 Richmond, Duke of, 160
 Rickards, Mr., 74
 Robertson, Lord, 206
 Rob Roy country, View of, 119
 Robson, Sir William, 186
 Rodwell Hunter, Mr., K.C., 169
 Rofe, Mr., C.E., 191 n.
 Rolleston, Sir John, 263
 Roman aqueducts, 94
 Romer, Sir Robert, as Chairman of Quarter Sessions, 186
 Rubber trees, 281
 Russell, Lord John, 4
 Russell, C. A., Mr., K.C., Arbitrations before, 213, 253
 Ryde, Walter, Mr., 131
- Scott Dickson (Lord Scott Dickson), 241
 Scott, Sir Walter, 4; portrait of, 5
 Scott, Hope, Mr., 273
Secret of Hegel, Author of, 2
 Selby, Lord, 143
 Sellon, Mr., C.E., 191 n.
 Senatus Academicus and Speculative Society, 5
 Severn tunnel water, 237
 Sewage disposal, 264
 Seymour, Digby, Mr., Q.C., 9, 181
 Shaw, Mr., 93
 Shee, Mr. Justice, Dinner to, 253
 Shelford, Mr., C.E., 191 n.
 Ship Canal, Manchester, 19, 174, 216, 272
 Shorthand writing, 243
 Shuttleworth, Lord, and commission on canals, 160
 Sidings in connection with railway, 111
 Simon, Sir John, 109, 215
 Singapore, 277, 278
 Sinking fund and depreciation, 131, 132
 Smith, F. E., Attorney-General, 221
 Smith, Sir Gerrard, 19
 Smuts, General, 210
 Socialism, Economics of, 142
 Some other men, 133
 Somerset, Granville, Mr., Q.C., 19, 56, 91
 "Soup" at Sessions, 7
 South Africa, Arbitrations in, 210
 South-Eastern Railway Company and peace agreement, 204
 Southampton Docks, Acquisition of, 178
 "Special adaptability" 257, 258, 259
 "Speculative Society," 4; dispute with Senatus Academicus, 5
 Speeches, 271
 Steam traction in the future, 33
 Stephen, Fitz James, Mr., 55
 Stephens, Pembroke Scott, Mr., Q.C., 85
 Stevenson, Robert Louis, 4, 272
 Stevenson, Mr., C.E., 191 n.
 Stewart, Dugald, 4
 Stockton and Middlesbro' Water Company, Purchase of, 38
 Strachan, Mr., C.E., 191 n.
 Subsidence in salt districts, 191, 193
 Suez, 288
 Suez Canal, 277
- ST. ALDWYN, Earl (Sir Michael Hicks-Beach), 275
 Salford town and the Mono-rail Railway, 22
 Salisbury, Mr., 86
 Salt rock, Mining of, 192
Saturday Review quoted, 152;
 Venables' connection with, 55
 Saunders, Herbert, Q.C., 85
 Scotch Private Bill Procedure Act, 161

- Sutherland, Duke of, 255
 Sutton, Mr. Justice, 83
 Symonds, G. J., Mr., and rainfall, 101
 TACT, 274
 Tait, Mr., C.E., 191 n.
 Talbot, Mr., 15
 Talbot, Sir William, 268
 Tanjong Pagar Company's case, 278
 Taylor, Mr., C.E., 191 n.
 Tchekow, Anton, 230
 Temple Newsom arbitration, 214
 "Tenants' capital" in rating cases, 128
 Teufelsdrökh, 271
 Thackeray's *Little Dinner at Timmins's*, 14
 Thackeray's nose, 55
 Thames Sewage inquiry, 98
 Thirlmere, Water Scheme of Manchester, 29
 Thomas, Mr., 91
 Through rates on railways, 113
 Tidy, Dr. Meymott, 39, 97, 99
 Town Council of Edinburgh and Speculative Society, 6
 Town, extension of boundaries, 217
 Traction, electric, Advantages of, 26
 Trade, Board of, and level crossings, 178
 Tramway in a suburb, Evidence about, 34
 Tramways Act, 1870, 37
 Tramways' competition with railways, 17
 Travels, 275
 Trucks of private owners, 113
 Tunnel under the Mersey, 249
 UNDUE PREFERENCE by Railway Companies, 106
 Undue prejudice by Railway Companies, 106
 VENABLES, George Stovin, Q.C., 51, 54, 55, 90
 "Venus rose from the sea," 254
 Vicar's claim for compensation, 257
 Views, 114; of Iron Company's works, 114, 117; of Water Gathering Ground, 115; of Birmingham Gathering Ground, 117; of Lake District, 118; of Glasgow, 118; of Rob Roy country, 119
 Voil, Loch, Glasgow's proposal as to, 29
 Vyrnwy water supply to Liverpool, 27, 94
 Vyrnwy tunnel under Mersey, 249
 WAKEFIELD Water Company's Bill, 91
 Wallace (Sir D. M'Kenzie), 5
 Walton, Mr. Justice, 250
 Ward, Mr., 210
 Warmington, Mr., K.C., 88
 Water Bill, retainer dispute, 182
 Water Board, Rand, 210
 Water Companies, Compulsory purchase of, 38
 Water compensation, 101
 Water scheme, Derwent Valley, 27
 Water scheme, Thirlmere and Manchester, 29
 Water Supplies Protection Bill, 242
 Water Supply Bills, 27
 Watkin, Sir Edward, 204
 Watson, Lord, 205
 Webster, Sir Richard (Lord Alverstone), 50, 76, 81, 98, 109, 250
 Wells, Sir Mordaunt, 17
 Wightman Wood, Mr., 226
 Will, Shiress, Mr., K.C., 78, 87, 88, 169, 185
 Wills, Mr. Justice, 108, 181
 Wilson, John (Christopher North), 4
 Wilson, John, Mr., K.C., 241
 "Wine and Women," 253
 Witness, Expert, 200
 Witness, A good, 201
 Witnesses, 187; clergymen as, 187; doctors as, 191; engineers as, 191; financial, 198; and magnesia in water, 237
 Woodall, Sir Corbett, C.E., 191 n.
 Woodhead Sims, Dr., 96
 Woodward, Mr., 275
 "Woody fibre" (Professor Balfour), 3
 Working expenses of railways, 128
 Worsley Taylor, K.C., 42, 210
 Wright, R. S., Mr. Justice, 60, 108
 Wyatt, Sir Richard, 236
 YARMOUTH, Great, Water Bill, 99
 Yeast, Latour's discovery as to, 268
 Young, George (Lord Young), 137; Bench of Middle Temple, 138

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